

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 27th day of August, two thousand and nine.

Present:

JON O. NEWMAN,
RICHARD C. WESLEY,*
Circuit Judges,
JED S. RAKOFF,
*District Judge.***

LEON SMITH,

Petitioner-Appellee,

- v -

No. 08-3217-pr

DAVID ROCK, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY,

* The Honorable Sonia Sotomayor, originally a member of the panel, was elevated to the Supreme Court on August 8, 2009. The Clerk has designated, by random selection, the Honorable Richard C. Wesley to replace her. See Local Rule 0.14(2).

**The Honorable Jed S. Rakoff, United States District Court for the Southern District of New York, sitting by designation.

Respondent-Appellant.

For Petitioner-Appellee: RISA GERSON (Richard M. Greenberg, *on the brief*), Office of the Appellate Defender, New York, NY.

For Respondent-Appellee: ALYSON JOY GILL, Assistant Attorney General, *for* Andrew M. Cuomo, Attorney General of the State of New York, New York, NY.

1 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
2 AND DECREED that the order and judgment of the district
3 court granting Petitioner-Appellee's petition for a writ of
4 habeas corpus be **AFFIRMED**.

5 This is an appeal from a May 19, 2008 order and May 29,
6 2008 judgment of the Southern District of New York (Jones,
7 *J.*) granting Petitioner-Appellee Leon Smith's petition for
8 habeas corpus and vacating his conviction for robbery in the
9 second degree on the basis that it was objectively
10 unreasonable for the state trial court not to order *sua*
11 *sponte* a hearing regarding Smith's competency to stand
12 trial. "We review a district court's decision to grant or
13 deny a habeas petition *de novo* and its findings of fact for
14 clear error." *Hemstreet v. Greiner*, 491 F.3d 84, 89 (2d
15 Cir. 2007). Smith is entitled to habeas relief only if he
16 can demonstrate that the state court's decision was

1 "contrary to, or involved an unreasonable application of,
2 clearly established Federal law, as determined by the
3 Supreme Court." 28 U.S.C. § 2254(d)(1). It is not enough
4 that the state court simply erred in its application of
5 governing federal law; for a federal court to grant habeas,
6 any such error must have been "objectively unreasonable."
7 *Williams v. Taylor*, 529 U.S. 362, 409-11 (2000).

8 It is well established that where the evidence
9 "raise[s] a sufficient doubt as to a defendant's competence
10 to stand trial, the failure of the trial court to conduct a
11 competency hearing *sua sponte* violates due process." *Nicks*
12 *v. United States*, 955 F.2d 161, 168 (2d Cir. 1992) (citing
13 *Pate v. Robinson*, 383 U.S. 375, 385 (1966)). On direct
14 appeal, the Appellate Division, First Department stated,
15 "[w]e see nothing in the record to indicate that the trial
16 court improvidently exercised its discretion in failing to
17 order, *sua sponte*, a CPL article 730 examination to
18 determine whether [Smith] was competent to stand trial. In
19 this regard, we do not view the remarks made by the [trial]
20 court during the CPL 440.10 hearing as an indication that
21 the court viewed defendant as incompetent at the time of the
22 trial." *New York v. Smith*, 4 A.D.3d 163, 165 (2004)
23 (citations omitted). However, the correct inquiry is not
24 whether the trial court viewed the defendant as competent,
25 but whether it had "reasonable ground . . . to conclude that

1 the defendant may not be competent to stand trial." *Nicks*,
2 955 F.2d at 168.

3 After an independent review of the record, we conclude,
4 for the reasons stated by the district court in its
5 comprehensive and well-reasoned opinion, that "the trial
6 judge had sufficient doubt as to Smith's competence to
7 require a competency hearing before further proceedings, and
8 that both the Appellate Division and the trial judge's
9 application of the relevant legal standards were objectively
10 unreasonable." *Smith v. Rock*, 554 F. Supp. 2d 505, 513
11 (S.D.N.Y. 2008).

12 Accordingly, the order and judgment of the district
13 court granting the petition for habeas corpus relief are
14 hereby **AFFIRMED**.

15 For the Court
16 Catherine O'Hagan Wolfe, Clerk
17
18

19 By: _____