

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
December 12, 2006 Session

**PAUL DENNIS REID, JR., BY AND THROUGH LINDA MARTINIANO, NEXT
FRIEND v. STATE OF TENNESSEE**

**Direct Appeal from the Circuit Court for Montgomery County
No. 038887 John H. Gasaway, III, Judge**

No. M2006-01294-CCA-R3-PD - Filed July 3, 2007

Linda Martiniano, “next friend” for Paul Dennis Reid, Jr., appeals the trial court’s dismissal of the post-conviction petition she filed on Reid’s behalf. Although the trial court found that Martiniano qualified as Reid’s “next friend,” the court found that Martiniano’s petition did not sufficiently demonstrate Reid’s incompetence to warrant an evidentiary hearing on the issue. We hold that the trial court erred in its conclusion regarding the prima facie showing. We, therefore, reverse the judgment of the trial court and remand for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed; Case
Remanded.**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which ALAN E. GLENN and D. KELLY THOMAS, JR., JJ., joined.

Kelly A. Gleason and Nicholas D. Hare, Nashville, Tennessee, for the appellant, Paul Dennis Reid, Jr., by and through Linda Martiniano, next friend.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, Jennifer L. Smith, Associate Deputy Attorney General, John Wesley Carney, Jr., District Attorney General; and Art Bieber, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Background

On May 24, 2005, the Tennessee Supreme Court affirmed Reid’s first degree murder convictions and death sentences in this case. State v. Reid, 164 S.W.3d 286 (Tenn. 2005). Reid was convicted of the kidnapping and killing of two young female employees of a Baskin-Robbins ice cream store in Clarksville. The bodies of the victims were found the following morning in a park a couple of miles away. Reid was also convicted of robbing the store. In another case, Reid was sentenced to death for his convictions for the murders of two employees of a Captain D’s restaurant

in Nashville, see State v. Reid, 91 S.W.3d 247 (Tenn. 2002), and he is currently pursuing post-conviction relief in relation to the Captain D's case, see Reid v. State, 197 S.W.3d 694 (Tenn. 2006) (hereinafter Reid II). In a third case, Reid was convicted of murdering three employees at a McDonald's restaurant in Nashville. The supreme court recently affirmed the convictions and death sentences in the McDonald's case. State v. Reid, 213 S.W.3d 792 (Tenn. 2006).

On September 23, 2005, the Office of the Tennessee Post-Conviction Defender filed a petition for post-conviction relief on behalf of Reid in the Baskin-Robbins case. The petition was not signed by Reid. The State appealed the trial court's decision to consider the petition on its merits. The supreme court consolidated Reid's appeal with that of another death row inmate, Darryl Keith Holton. On May 4, 2006, our supreme court held that the trial court could not consider the petition filed on behalf of Reid because it was not signed by Reid, and the court further ruled that the Post-Conviction Defender did not qualify as "next friend." Reid v. State, 201 S.W.3d 626 (Tenn. 2006) (hereinafter Reid I).¹ The court noted that, as of the opinion date, Reid had never been found mentally incompetent by any court despite his history of mental illness. Id. at 635. Reid challenged his competency to stand trial in both the Baskin-Robbins and McDonald's cases; however, the trial court's rulings that he was competent were affirmed on appeal in both cases. See Reid, 164 S.W.3d at 308; Reid, 213 S.W.3d at 811-12.

On May 23, 2006, Reid's sister, Linda Martiniano, timely filed a petition for post-conviction relief on Reid's behalf in the instant case. The trial court conducted a hearing on the petition on June 12, 2006, and filed a written order dismissing the petition on June 13, 2006. Although the trial court found that Martiniano qualified as "next friend," the court concluded that the petition filed on Reid's behalf did not satisfy the threshold showing of incompetence established by the supreme court in Reid I. The case is now on appeal before this court.

Threshold Showing by "Next Friend"

In Reid I, the supreme court decided whether a "next friend" could file a post-conviction petition on behalf of an incompetent inmate who did not actually sign the petition. Reid, 201 S.W.3d at 628. The court held that post-conviction petitions may indeed be initiated by qualified "next friends" if they could make a prima facie showing of the inmates' present mental incompetence. Id. at 634-35.

In Reid I, the court set forth the requirements of meeting the threshold showing:

A prima facie showing to file a post-conviction petition as "next friend" requires evidence of an inmate's present mental incompetency "by attaching to the petition affidavits, depositions, medical reports,

¹ Reid v. State, 201 S.W.3d 694 (Tenn. 2006), was decided on May 4, 2006. Reid v. State, 197 S.W.3d 694 (Tenn. 2006) was decided on June 26, 2006. Despite the numbered citations designated by the reporter, we refer to 201 S.W.3d 694 as Reid I and 197 S.W.3d 694 as Reid II based on their decision dates.

or other credible evidence that contain specific factual allegations showing the petitioner's incompetence." Mere assertions or allegations of past or present mental incompetency are not sufficient; instead, the supporting evidence must satisfy the standard required in determining whether mental incompetency may toll the post-conviction statute of limitations. If a prima facie showing is satisfied, and if there is likewise a showing that the putative next friend is acting in the best interests of the petitioner, additional hearings may be held for a determination of mental competency.

Id. at 634-35 (quoting State v. Nix, 40 S.W.3d 459, 464 (Tenn. 2001)) (citations omitted). Later, in Reid II, our supreme court restated the standard as follows:

[In Nix, we] emphasized that "[u]nsupported, conclusory, or general allegations of mental illness" are insufficient to meet the required threshold showing. . . . "While affidavits and depositions of mental health professionals may be utilized, they are not essential, and a petitioner may rely upon affidavits and depositions from family members, prison officials, attorneys, or any other person who has knowledge of facts that demonstrate either the petitioner's inability to manage his personal affairs or the petitioner's inability to understand his legal rights and liabilities."

Reid, 197 S.W.3d at 702-03 (quoting Nix, 40 S.W.3d at 464).

Reid I demonstrates that the burden is on the petitioner, acting through the next friend, to "make a threshold showing" that the petitioner is incompetent. Id. at 703. If this prima facie showing is satisfied, the trial court will then hold a hearing to determine whether or not the inmate is competent. Id. Clearly, the burden placed on the petitioner to make the threshold showing is less than the burden of proof required during the subsequent competency hearing. Requiring a petitioner to *prove* his incompetency during the prima facie showing would necessarily obviate the need for any subsequent hearing. We do not believe the supreme court contemplated such a requirement. While the prima facie showing requires more than mere assertions or allegations, the threshold showing is met if "'there exists a genuine disputed issue regarding the prisoner's present competency.'" Reid, 201 S.W.2d at 634 (quoting Van Tran v. State, 6 S.W.3d 257, 269 (Tenn. 1999)). The rule set forth by the supreme court in Reid I and Reid II only requires a next friend, through affidavits, depositions, medical reports, or other credible evidence, to *show or demonstrate* that a petitioner is incompetent.

Once this threshold showing is satisfied, the trial court should then hold a hearing to determine, based on the evidence produced at that hearing, whether the inmate is, indeed, incompetent. Reid, 197 S.W.3d at 703. It is during this subsequent hearing that the petitioner bears the burden of *proving* his incompetence. Citing the burden of proof required by the Post-Conviction

Procedure Act, Tennessee Code Annotated section 40-30-110(f), our supreme court has held “that at a competency hearing a petitioner bears the burden of proving by clear and convincing evidence that he or she is incompetent to proceed in a post-conviction action.” Reid, 197 S.W.3d at 705.

The supreme court has also held that the civil standard of mental incompetence, which was adopted in Nix,² applies to the determination of whether an inmate is incompetent to proceed in a post-conviction proceeding. Reid, 197 S.W.3d at 702. The Nix standard provides that “[a] petitioner is . . . incompetent to pursue post-conviction proceedings only if he is unable either to manage his personal affairs or to understand his legal rights and liabilities.” Id. In Reid II, our supreme court concluded that the civil standard of competency is sufficient to satisfy the due process requirement that a petitioner be provided an opportunity to present post-conviction claims at a meaningful time and in a meaningful manner. Id. As the supreme court recognized, the need for a criminal defendant’s ability to make fundamental decisions and rationally consult with counsel at trial is distinguishable from a petitioner’s participation in the post-conviction context, most notably because “[o]n post-conviction, the decision-making authority shifts to counsel.” Id. Thereby, the level of requisite competence is different.

Ruling of the Post-Conviction Court

In the instant case, after the parties filed their petitions and responses, the trial court conducted a hearing to allow the parties to make arguments in support of their pleadings. The trial court did not hear testimony from any witnesses, aside from the affidavits attached to the petition, and Reid was not present during the hearing. After the arguments, the trial court commented in its written order in the instant case that “these issues lead us into uncharted territory.”³ The two questions presented to the trial court were whether Martiniano qualified as “next friend,” and, if so, whether she made a threshold showing of Reid’s present mental incompetence to warrant a full hearing on the matter. The court held that Martiniano satisfied both prerequisites to proceed as “next friend” on Reid’s behalf: first, Martiniano alleged Reid cannot proceed on his own because he is mentally incompetent, and second, Martiniano is dedicated to Reid’s best interests because she is his sister. See Reid, 201 S.W.3d at 632. The trial court’s ruling on Martiniano’s “next friend” status is not an issue on appeal before this court.

The trial court concluded, however, that Martiniano did not satisfy the prima facie showing of incompetence. The petition filed in the trial court includes the following attachments: letters written by Reid to family members; an affidavit by Martiniano; an affidavit by Kelly Gleason, Assistant Post-Conviction Defender; an affidavit of Connie Westfall, an investigator with the Office of the Post-Conviction Defender; an affidavit by James A. Simmons, Reid’s former counsel in the

² The issue before the supreme court in Nix was what standard of mental incompetence must a petitioner satisfy in a post-conviction proceeding before due process permits tolling of the statute of limitations.

³ The trial court had the benefit of the supreme court’s opinion in Reid I, but Reid II had not yet been decided. As the trial court stated in its order, Reid I “provides our only guidance at the present time.”

Baskin-Robbins case and counsel in the McDonald's case; and an affidavit by George W. Woods, Jr., a neuropsychiatrist. As the trial court observed, the several affidavits submitted allude to Reid's mental disorder. Each affidavit refers to Reid's delusion that he is under government-directed surveillance and influence, what he calls "scientific technology." The affidavits of Gleason and Westfall detail Reid's actions and behavior during their visits with Reid. The affidavits also mention that Reid, because of these delusions, is unable to make rational decisions about his cases. Regardless, the trial court found that none of the affidavits specifically commented on Reid's present incompetence, that is, whether Reid is able to manage his personal affairs or understand his legal rights and liabilities.

Dr. Woods stated in his affidavit that "Mr. Reid currently is suffering from perceptual and memory impairments which render him unable to reliably relate events of his trial. His delusional beliefs that current counsel are members of the conspiracy against him preclude rational communication regarding his legal options and thus he is unable to effectively perceive and understand his legal right[s] and liabilities in any meaningful sense." Dr. Woods interviewed Reid on two occasions in August and October of 2005. Despite this statement from Dr. Woods, the trial court concluded the requisite threshold had not been met, saying:

Clearly, Dr. Woods incorporates the language of the [Reid I] standard into his affidavit seemingly to satisfy the standard. However, his opinions or conclusions that the standard has been met without supporting specific factual allegations fall short. Conspicuously absent from Woods' submission is a claim that Mr. Reid has ever been specifically asked about his legal rights and liabilities.

The court further stated:

While some of the submissions contain detailed facts of Mr. Reid's behavior and illuminate variations on his "scientific technology" delusions, none of the submissions contain specific factual allegations that demonstrate Mr. Reid is either unable to manage his personal affairs or understand his legal rights and liabilities.

These voluminous submissions are devoid of any indication that Mr. Reid was questioned about his ability to manage his personal affairs or his understanding of his legal rights and liabilities or that such an inquiry was attempted but was unsuccessful due to his alleged present mental incompetence.

Standard of Review on Appeal

When reviewing a trial court's findings of facts in an ordinary post-conviction proceeding, this court is bound by the trial court's findings of facts unless the evidence in the record preponderates against those findings. See Fields v. State, 40 S.W.3d 450, 458 (Tenn. 2001). A trial court's decision to allow a death row inmate to withdraw an already-filed petition is reviewed under a similar standard. See Tenn. Sup. Ct. R. 28, § 11(C) ("The issue of competency will be reviewed as an issue of fact and the trial court's finding will be presumed correct, unless the evidence in the record preponderates against it."). Additionally, in the ordinary post-conviction context, the court's review of the trial court's conclusions of law is de novo with no presumption of correctness. Fields, 40 S.W.3d at 458.

In the instant case, there has been no ruling on Reid's competency to pursue post-conviction relief. The trial court merely ruled that the "next friend" did not satisfy the threshold showing of incompetence to warrant a full hearing on the issue. The procedure herein is similar to the procedure to be followed when an inmate, or "next friend," asserts incompetency to be executed. Although the standard of competency itself is slightly different (whether a prisoner lacks the mental capacity to *understand* the fact of the impending execution and the reason for it), the inmate is still required to make a threshold showing of present incompetency before a full hearing will be ordered. See Thompson v. State, 134 S.W.3d 168 (Tenn. 2004). Our supreme court has explained that because "[t]he trial court's decision at the threshold showing stage generally involves no factual determinations entitled to deferential review," appellate review of a trial court's conclusion that an inmate failed to establish a genuine issue regarding his present incompetency will be conducted de novo. Id. at 177. In other words, whether a genuine issue exists about a prisoner's competency is a question of law. Id. Accordingly, because the trial court in the case at hand found that Martiniano's submissions did not meet the threshold showing, this court has decided to follow the supreme court's guidance in Thompson and conduct a de novo review of the issue.

Analysis

On appeal, Martiniano argues that the trial court erred by not finding a prima facie showing of Reid's incompetence. She also argues that the State should be estopped from contesting competency in this case when it has already conceded in federal court that Reid is incompetent to pursue habeas corpus proceedings. The State, on the other hand, contends the trial court's findings of fact and conclusions of law in this case are correct. The State also argues that the applicable competency standard in the federal case is different than the Nix standard, and, therefore, its concession in federal court has no bearing on the matter at hand.

We will first address Martiniano's contention regarding the State's concession in federal court. Following the filing of the notice of appeal in the instant case, Martiniano filed a motion for stay of execution in the federal district court, and she also filed, as "next friend," a habeas corpus petition on Reid's behalf. The district court granted the stay. The lower federal court also found sufficient evidence to raise a reasonable doubt about Reid's competency under the standard discussed in Kirkpatrick v. Bell, 64 Fed. Appx. 495 (6th Cir. 2003) (federal case discussing Reid's competency in one of the Davidson County cases). Although the federal court of appeals upheld the stay of

execution, it remanded the matter to the district court regarding the competency issue for a determination of whether Reid had exhausted all of his state court remedies before he filed the federal habeas corpus petition. Martiniano ex rel. Reid v. Bell, 454 F.3d 616 (6th Cir. 2006).

As our supreme court noted in its recent opinion in the McDonald's case, "[t]he State appeared in the [Federal] District Court on August 24, 2006, [on the petition filed by Martiniano in the Baskin-Robbins case] and announced that it would 'withdraw its objection' to Martiniano acting as next friend of the defendant 'on the basis of a psychological examination that was conducted by [the State's] retained expert . . . which resulted in . . . a conclusion that [Reid] is presently incompetent to make a rational decision to waive his capital appeals in accordance with the standards set forth in' Rees v. Peyton[], 384 U.S. 312, 86 S. Ct. 1505 (1966)]." Reid, 213 S.W.3d at 812. However, the supreme court denied the request to consider the State's concession as a post-judgment fact under Rule 14, Rules of Appellate Procedure. Id. at 813. The court concluded that the State's later concession in the unrelated federal case would "have little, if any, bearing" on the issue of the trial court's finding of appellant's competency to stand trial in the earlier state case. Id.

In support of her assertion that the State should be estopped from contesting competency in the instant case, Martiniano seems to suggest that the Nix standard and the federal standard enunciated in Rees are one and the same. In Rees, the United States Supreme Court had to decide whether a death row inmate, alleged to be incompetent by counsel, should have been allowed to withdraw his petition for a writ of certiorari from the denial of habeas corpus relief. In order to aid its decision, the Supreme Court directed the district court to determine whether the inmate had the "capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he [was] suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises." Rees, 384 U.S. at 314, 86 S. Ct. at 1506.

Reid II, however, rejects any suggestion that the Rees and Nix standards of competency are "functionally equivalent." Our supreme court stated that the application of the competency standard in Rees, which has since been incorporated in the Tennessee Rules of Post-Conviction Procedure, Rule 28, section 11(B)(1), Rules of the Supreme Court, "is limited . . . to the unique circumstances involved when a petitioner in a capital case seeks to withdraw an already-filed post-conviction petition and waive further post-conviction relief." Reid, 197 S.W.3d at 701 n.7. Despite the procedural context of the case before the United States Supreme Court in Rees, it appears this standard of competency, namely whether an inmate can understand his rights and make rational choices with respect to those rights, is also applied by the federal courts when determining whether a "next friend" may initiate habeas corpus proceedings on behalf of an inmate who has expressed a desire not to pursue any further appeals of his sentence. See, e.g., Martiniano ex rel. Reid v. Bell, 454 F.3d 616 (6th Cir. 2006); Kirkpatrick v. Bell, 64 Fed. Appx. 495 (6th Cir. 2003); Harper v. Parker, 177 F.3d 567 (6th Cir. 1999); see also West v. Bell, 242 F.3d 338, 341 (6th Cir. 2001) (noting difference in cases where habeas petition has been filed by inmate versus those where inmate declines to initiate habeas proceedings).

Although there is some dicta by our supreme court in Reid II which suggests that “[d]ue process considerations do not mandate different levels of competency at different stages of post-conviction proceedings,” the court’s ultimate holding is that “the civil standard of mental incompetence adopted in Nix applies to the determination of whether a petitioner is competent to proceed in a post-conviction action.” 197 S.W.3d at 702. Accordingly, it is apparent from the court’s holding that the level of competency required to commence a post-conviction proceeding is different than the level required to terminate a pending proceeding, at least in the capital case context.⁴ As the court stated, “Due process requires only that a petitioner be provided an opportunity for the *presentation* of claims at a meaningful time and in a meaningful manner.” Id. (emphasis added).

As the State contends in its brief, this court is reviewing whether the trial court erred in finding that Martiniano failed to meet the requisite threshold showing of incompetence to warrant a full hearing; we are not deciding at this time whether Reid is, in fact, incompetent. We do not believe the State’s concession in the federal district court hearing, which was made while operating under a different legal standard of competency and was subsequent to the trial court’s ruling in this case, has any bearing on our consideration of the narrow issue presented for review, namely whether the trial court erred in finding that Martiniano did not satisfy the initial showing of incompetence.

We now turn to the ultimate issue before us. Again, the trial court in this case concluded that Martiniano did not satisfy the prima facie showing. This court must determine whether Martiniano submitted a petition for post-conviction relief with sufficient attachments “that contain specific factual allegations *demonstrating* either [Reid’s] inability to manage his . . . personal affairs or [his] inability to understand his legal rights and liabilities.” Reid, 197 S.W.3d at 703 (emphasis added). As noted above, our review of this issue is de novo.

Attorney Kelly Gleason prepared a forty-two page affidavit in which she detailed her observations of and interactions with Reid from her first meeting with Reid on September 16, 2004, through April 2006, shortly before the hearing in the instant case. Her affidavit is replete with specific instances which occurred during this time period exemplifying Reid’s belief that “scientific technology” controls all aspects of his life. Gleason stated that Reid’s “delusional beliefs have caused him to either refuse to discuss legal issues with [her], as he believes it is futile, or to discuss only the specific delusional beliefs he holds about his trial attorneys, the trial judges . . . literally everyone.” According to Gleason, Reid believes everyone who claims to be helping him is being coached by this “scientific technology.”

Connie Westfall’s fourteen page affidavit recounts encounters she had with Reid from her first visit on May 9, 2003, until February 17, 2006. Westfall provides detailed accounts of

⁴ The civil competency standard referenced in Nix applies to state post-conviction cases initiated by a “next friend.” However, if the case involves a death row inmate attempting to withdraw a pending petition, the federal standard enunciated in Rees applies. The supreme court was aware of the different standard set forth in Rees, which it adopted in the Rules of Post-Conviction Procedure, but evidently chose not to extend that standard to cover cases wherein a “next friend” alleges an inmate is incompetent to file a post-conviction petition.

statements Reid made concerning his delusional belief regarding “scientific technology.” According to Westfall, during one meeting Assistant Post-Conviction Defender Nicholas D. Hare “asked Reid to explain to him what he wanted him to do as his attorney. Reid said there was nothing [Hare] could do as he was controlled by the government military and if he could do anything, the only thing he wanted was for Hare to get the scientific technology turned off.” During another meeting with Gleason and Westfall, Reid accused the Post-Conviction Defender of being “part of the evil government military,” and he “asserted that he no longer believes anything from any source outside himself.” Westfall averred that Reid believes everyone who comes into contact with him is controlled by the government. After detailing her numerous meetings between Reid, his attorneys, and herself, Westfall concluded her affidavit by stating, “Reid has never been able to discuss his case(s) in a meaningful way with his attorneys in my presence. From my lay perspective, he has descended completely into his delusion.”

Dr. George W. Woods, Jr., a neuropsychiatrist, evaluated Reid on two occasions in August and October 2005. His affidavit was prepared and sworn to on May 22, 2006, and was submitted along with the petition in this case. Dr. Woods stated that Reid suffers from a “neurological disorder – left temporal lobe dysfunction” which has produced in “Reid a chronic, schizophrenia-like psychosis which has severely impaired his ability to weigh, deliberate, inform and cooperate.” Dr. Woods opined that Reid “is unable to effectively perceive and understand his legal right[s] and liabilities in any meaningful sense.” Dr. Woods also stated that Reid is unable to manage his personal affairs because “he believes that scientific technology controls and ‘coaches’ correctional officers, other inmates, and literally everyone with who[m] he comes into contact.” Due to Reid’s delusional belief that “the military government” is using “scientific technology” to torture him, Reid sees execution as the only way to end the torture and “turn off” the “scientific technology.” Accordingly, Dr. Woods believes Reid is “incompetent to decide whether to pursue a post-conviction petition on his own behalf or abandon that right.” Dr. Woods’ conclusions were based on his observations of Reid and his review of Reid’s mental health records.

Attorney James A. Simmons represented Reid in the direct appeal of the instant Baskin-Robbins case as well as the McDonald’s case. Simmons signed his affidavit on June 11, 2006. In the affidavit, Simmons stated:

I have met with Mr. Reid on several occasions and attempted to discuss his legal affairs. During the entire time I have represented Mr. Reid, he has never been able to have a rational conversation with me about his cases. He will not even engage in discussions about his cases.

. . . Instead, Mr. Reid’s primary interest has been in discussing his sincere delusional belief that everything he says and does is recorded by the military government and that they are torturing him with “scientific technology.” Mr. Reid also believes

that everyone in his life, myself included, is “coached” regarding what to do or say by this nonexistent entity. . . .

. . . It is my belief, based on my personal interactions with Mr. Reid and the letters he writes to me, that he is currently completely out of touch with reality. Over the years, I have watched his mental condition, which was always very bad, deteriorate. I do not believe he can make rational decisions about his legal options. I do not believe he can make his own medical decisions, because he is not even aware that he is severely mentally ill.

On appeal, we have also reviewed the letters written by Reid and the affidavit of Martiniano. Neither the trial court nor this court, at this stage of the proceeding, needs to decide whether or not Reid is, in fact, incompetent. The question to be answered is whether Martiniano has shown enough in the petition filed on Reid’s behalf to warrant a full evidentiary hearing on the matter.

The trial court seemed to focus on the fact that none of the evidence presented in support of the petition revealed whether Reid was ever specifically asked if he understood his rights and liabilities. However, as the affidavits explain, Reid apparently has never been able to engage in a rational conversation with anyone about his cases. Neither Reid I nor Reid II requires the supporting evidence to state whether the petitioner has specifically been asked questions about his understanding of his rights. Instead, the evidence need only “‘*demonstrate*[] either the petitioner’s inability to manage his personal affairs or the petitioner’s inability to understand his legal rights and liabilities.’” Reid, 197 S.W.3d at 703 (emphasis added). Accordingly, the fact that Reid may not have specifically been questioned about his understanding of his rights is not fatal to the prima facie showing. As the supreme court in Reid II recognized, affidavits from medical experts or attorneys are not essential to make a threshold showing as long as there is some evidence accompanying the petition which *demonstrates* the petitioner might be incompetent. The subsequent evidentiary hearing is the proper forum for requiring *proof* of incompetence.

We conclude that the statements contained in the affidavits, namely that Reid has been unable to communicate rationally about his cases with his attorneys, demonstrate his alleged incompetency to a sufficient degree to require an evidentiary hearing. The evidence attached to the petition filed by Martiniano is more than “[u]nsupported, conclusory, or general allegations of mental illness.” Id. at 702 (quoting Nix, 40 S.W.3d at 464). There are numerous specific factual allegations contained in the affidavits showing “‘there exists a genuine disputed issue regarding [Reid’s] present competency.’” Id. (quoting Van Tran, 6. S.W.3d at 269). Martiniano has submitted affidavits of individuals who possess enough “knowledge of facts that demonstrate” Reid’s inability to understand his rights and liabilities. Id. at 703. Again, the purpose of the prima facie showing is not to prove Reid’s incompetence; it is merely a threshold hurdle requiring the next friend to file a post-conviction petition alleging more than bare and unsupported allegations of incompetency. Upon our review of the record, we believe this threshold has been satisfied in this case.

Conclusion

Based upon our de novo review of the record in this case, we conclude that the trial court erred in finding that Martiniano did not meet the prima facie showing of Reid's alleged incompetence.⁵ The trial court's dismissal of the petition for post-conviction filed by the "next friend" is hereby reversed, and this case is remanded to the trial court for an evidentiary hearing to determine whether Reid is incompetent to pursue post-conviction relief on his own behalf.

NORMA MCGEE OGLE, JUDGE

⁵ Given our holding in this case, we need not address Martiniano's claim that Reid's due process rights were violated during the threshold hearing.