

United States v. Martinez-Hernandez, No. 08-50133

FEB 25 2009

GRABER, Circuit Judge, dissenting:

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

I respectfully dissent.

The district court carefully and reasonably explained why Dr. Carroll's conclusions about competence were persuasive. Even more importantly, the court described Defendant's demeanor and participation in the proceedings. These personal observations, in addition to the expert evidence, caused the court to find that Defendant was in fact competent to stand trial. Unlike in United States v. Hoskie, 950 F.2d 1388, 1392 (9th Cir. 1991), where "the district court itself was not convinced that Hoskie was competent, but was unwilling to find incompetency" because of the defendant's dangerousness, here the court plainly was convinced that Defendant had the requisite ability, at the time of trial, to consult with counsel and understand the proceedings. Accordingly, I would not find clear error and would affirm.