

No. 1-09-0744

NOTICE: This order was filed under Supreme Court Rules 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from
) the Circuit Court
Plaintiff-Appellee,) of Cook County
)
v.) No. 05 CR 26692
)
DEWAYNE KNIGHTEN,) Honorable
) James B. Linn,
Defendant-Appellant.) Judge Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Justices McBride and R.E. Gordon concurred in the judgment.

ORDER

HELD: Defendant received a constitutionally sufficient hearing on his fitness to stand trial. Defense counsel was not ineffective.

Following a bench trial, defendant Dewayne Knighten was convicted of first-degree murder and sentenced to 30 years in prison. On appeal, defendant does not challenge the sufficiency of the evidence but contends that: (1) his pretrial fitness hearing was constitutionally deficient and; (2) his attorneys were ineffective for failing to demand a sufficient fitness hearing.

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We affirm.

Before trial, defendant was referred to Cook County circuit court staff forensic psychiatrist Roni L. Seltzberg for an examination of his fitness to stand trial. On April 28, 2006, Seltzberg reported that in her opinion defendant was not fit for trial. Seltzberg said defendant “presented with a thought disorder which was consistent with a psychiatric disturbance, possibly of a Schizoaffective or Bipolar Disorder” and that “[i]npatient psychiatric hospitalization with appropriate medication intervention would likely render [defendant] fit for trial within the statutory period of one year.”

The State requested another fitness evaluation, and on May 10, 2006, staff psychiatrist Jonathan Kelly reported that defendant was “fit to stand trial with medication.” Kelly said defendant was taking antipsychotic and antidepressant medications, and “does not have side effects that interfere with his fitness to stand trial. He needs to continue his medications, in order to maintain adequate remission of his Psychotic Disorder, and to maintain his fitness to stand trial.”

On June 8, 2006, at a status hearing, the following colloquy took place:

“THE COURT: [Defendant] is before the bench. He’s in custody represented by [counsel]. We had an opinion from Doctor Seltzberg ([p]honic) in May indicating *** her opinion he’s not fit for trial and there was a request for a second [behavioral clinical exam].

[PROSECUTOR]: That’s correct, your Honor.

THE COURT: Anybody know what’s going on with that? Do you know?

* * *

THE COURT: All right. This is [defendant], we do have a second report. This is a report from Doctor Kelly *** indicating that in his opinion, the defendant is fit for trial with medication. We have one saying not fit and one saying fit with meds.

[PROSECUTOR]: It seems the original Doctor Seltzberg saw him, that the defendant may not have been receiving medication because [Seltzberg] does state that he does need appropriate medical intervention. Now that he's receiving medication, he seems to be fit.

[DEFENSE COUNSEL]: That seems to be my understanding, your Honor. Could we get a date for status, late July?

THE COURT: Status to do what? We're here today. What do you want to do?

[DEFENSE COUNSEL]: I'd like to continue this so I could talk to my client about the results of these two reports.

THE COURT: We are either going to have a contested hearing.

[DEFENSE COUNSEL]: No.

THE COURT: Are you going to stipulate to this and agree to this?

[DEFENDANT]: Yes.

THE COURT: We can do it right now.

[PROSECUTOR]: Jonathan Kelly ([p]honic) would testify that he's a

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medical doctor and a forensic psychiatrist employed by Forensic Clinical Services in this building. It would be further stipulated that he is an expert in the field of forensic psychiatry and would be qualified to testify as such. Doctor Kelly would state that he did an evaluation of this defendant, who he would identify in open court as Dewayne Knighten[,] and found him fit to stand trial without medication. Doctor Kelly would state the defendant understands the charges against him and the nature and purpose of legal proceedings and that the defendant is able to assist in his defense. Doctor Kelly would state the defendant is presently taking several antipsychotic medications and antidepressant medication. He does not have side effects to interfere with his fitness to stand trial. He does need to take his medication in order to maintain adequate ([i]naudible) of a psychotic disorder and pain to attain his fitness to stand trial.

So stipulated?

[DEFENSE COUNSEL]: So stipulated.

THE COURT: Any other evidence on the issue of fitness?

[DEFENSE COUNSEL]: No.

[PROSECUTOR]: No.

THE COURT: Based on the stipulated uncontradicted testimony I heard, I find that [defendant] is fit for trial with medications.”

The evidence at trial showed that on July 24, 2005, at about 5:30 p.m., defendant shot John Hutchins in front of a house at 3552 West Huron in Chicago. Hutchins later died from his

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wounds. The court found defendant guilty of first-degree murder.

Defendant appeals, contending that: (1) he was deprived the effective assistance of counsel where his attorneys failed to demand “fitness” hearings where dual psychiatric examinations resulted in conflicting “fitness” reports; and (2) the trial court’s unexplained insistence on an immediate disposition of defendant’s “fitness for trial” abrogated his due process rights.

We note at the outset defendant’s failure to include his claims of error in a posttrial motion. But, because the determination of a defendant’s fitness to stand trial concerns a substantial right, we will review it as plain error. *People v. Basler*, 193 Ill. 2d 545, 549, 740 N.E.2d 1 (2000); *People v. Lucas*, 140 Ill. App. 3d 1, 6, 487 N.E.2d 1212 (1986).

A trial court’s decision on a defendant’s fitness to stand trial will normally not be reversed absent an abuse of discretion. *People v. Contorno*, 322 Ill. App. 3d 177, 179, 750 N.E.2d 290 (2001). “When a defendant has previously been found unfit, a finding of restored fitness must be based not only upon a stipulation to the conclusion of psychiatric reports, but upon an affirmative exercise of the court’s discretion to determine the defendant’s mental state.” *People v. Esang*, 396 Ill. App. 3d 833, 839, 920 N.E.2d 565 (2009). The parties may stipulate to what the expert would testify, but they may not stipulate to an expert’s conclusions regarding fitness. *Contorno*, 322 Ill. App. 3d at 179. “The ultimate decision as to a defendant’s fitness must be made by the trial court, not the experts.” *Contorno*, 322 Ill. App. 3d at 179, citing *People v. Bilyew*, 73 Ill. 2d 294, 302, 383 N.E.2d 212 (1978).

At the pretrial hearing on defendant’s fitness to stand trial, the court acknowledged receipt of Doctors Seltzberg and Kelly’s psychiatric reports. The prosecutor explained to the court: “[i]t

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seems the original Doctor Seltzberg saw him, that the defendant may not have been receiving medication because she does state that he does need appropriate medical intervention. Now that he's receiving medication, he seems to be fit." Compare *Esang*, 396 Ill. App. 3d at 840 (the defendant's refusal of psychotropic treatment suggested that his medical condition was "minimally changed from the time of the earlier finding that he was unfit"). The parties then stipulated that Doctor Kelly would testify that defendant was fit to stand trial with medication, understood the charges against him and the nature and purpose of legal proceedings, was able to assist in his defense, and the side effects from the medication he was taking did not interfere with his fitness to stand trial. The court then asked if the parties had other evidence bearing on defendant's fitness. Based on the stipulated testimony, the court found defendant fit for trial. The court was not required to question defendant during the fitness hearing or make express findings about the factors it considered when finding him fit for trial. *People v. Goodman*, 347 Ill. App. 3d 278, 287, 806 N.E.2d 1124 (2004) ("we are aware of no statute or supreme court rule that requires trial courts to either independently question a defendant or make express findings of fact regarding fitness"). We find the procedure used by the trial court during the pretrial fitness hearing did not violate the requirements of due process. See *People v. Richardson*, 376 Ill. App. 3d 612, 622, 876 N.E.2d 303 (2007); *Goodman*, 347 Ill. App. 3d at 287.

Defendant next contends he was deprived of his right to the effective assistance of counsel. To succeed on a claim of ineffective assistance of counsel, the defendant must establish that: (1) counsel's performance was deficient; and (2) counsel's deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 104 S. Ct. 2052

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(1984). Falling short on either element is fatal to the claim. *People v. Williams*, 391 Ill. App. 3d 257, 269, 908 N.E.2d 1079 (2009).

Under the first prong, the defendant must show that counsel's performance fell below an objective standard of reasonableness. *People v. Cloutier*, 178 Ill. 2d 141, 163, 687 N.E.2d 930 (1997). A reviewing court must strongly presume that counsel's conduct was reasonable, and it is the defendant's burden to overcome the presumption that, under the circumstances, a challenged action might be considered sound trial strategy. *People v. Peeples*, 205 Ill. 2d 480, 512, 793 N.E.2d 641 (2002).

Defendant has failed to prove trial counsel was ineffective. Defendant appears to frame his argument around the idea that counsel failed to request a fitness hearing. The cases cited by defendant involve situations where defense counsel failed to request a fitness hearing. As discussed above, a fitness hearing that comported with due process took place before trial. Defendant was found fit to stand trial after both parties stipulated to Doctor Kelly's psychiatric report. We will presume defense counsel's decision not to engage in a contested hearing on defendant's fitness was trial strategy. Given the prosecutor's comment "that the defendant may not have been receiving medication because [Dr. Seltzberg] does state that he does need appropriate medical intervention. Now that he's receiving medication, he seems to be fit," defense counsel may have believed a contested hearing would have been futile.

Defendant received a fitness hearing that comported with due process and was not deprived of the effective assistance of counsel. There was no plain error.

Affirmed.