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No. 3--09--0340

Order filed January 4, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 9th Judicial Circuit,
)	Knox County, Illinois,
Plaintiff-Appellee,)	
)	
v.)	No. 03--CF--197
)	
SHAWN A. SKINNER,)	Honorable
)	Steven R. Bordner,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

Held: The trial court did not err in denying defendant's postconviction petition after an evidentiary hearing where defendant failed to show he was prejudiced by trial counsel's waiver of defendant's right to view a videotaped forensic interview that was admitted as evidence at trial and defendant could not show that his trial counsel's failure to move for a fitness exam was objectively unreasonable.

After a bench trial, defendant, Shawn A. Skinner, was convicted of predatory criminal sexual assault of a child (720 ILCS 5/12--14.1(a)(1) (West 2002)) and sentenced to 20 years in

prison. Defendant's conviction was affirmed on direct appeal. *People v. Skinner*, No. 3--05--0622 (2007) (unpublished order under Supreme Court Rule 23). Thereafter, defendant filed a petition for postconviction relief. After hearing evidence and considering arguments of the parties, the trial court denied the petition. Defendant appealed, arguing that he was deprived of his right to the effective assistance of counsel because his trial counsel: (1) waived defendant's right to be present when the trial court viewed a videotape that was admitted into evidence; and (2) failed to inform the trial court of facts that would have raised a *bona fide* doubt as to defendant's fitness. We affirm.

FACTS

Defendant lived with his girlfriend and her three children. After the Department of Children and Family Services began investigating allegations of physical abuse by defendant against the oldest child, a seven-year-old girl, she disclosed allegations of sexual abuse by defendant. The victim was interviewed by Jennifer McPhail, a forensic interviewer, and the interview was videotaped. Thereafter, defendant was charged with predatory criminal sexual assault, and defendant was appointed counsel.

Prior to trial, defendant asked his trial counsel to view the videotaped forensic interview. Trial counsel did not show

defendant the videotape, but trial counsel discussed the contents of the interview at length with defendant. Defendant elected to waive a jury trial, and the case proceeded to a bench trial. The victim and her mother both testified at trial, as did McPhail and the police officer who observed the forensic interview. The State submitted the videotape into evidence. The trial court watched the videotape in chambers after the court had recessed for the day, with no objection from the State or defendant's counsel. When the trial resumed, defendant testified. The trial court found defendant guilty.

Defendant's motion for a new trial was denied, and the trial court sentenced defendant to 20 years in prison. Defendant's conviction was affirmed on appeal. *Skinner*, No. 3--05--0622.

Defendant filed the instant petition for postconviction relief. In his petition, defendant argued that: (1) he did not understandingly waive his right to a jury trial; (2) his trial counsel provided ineffective assistance of counsel because he waived defendant's right to be present when the trial court viewed a videotape that was admitted into evidence; and (3) his trial counsel was ineffective for failing to inform the trial court of facts that would have raised a *bona fide* doubt as to defendant's fitness.

After an evidentiary hearing, the trial court denied relief, holding that defendant did not have a right to view the videotape

prior to trial. Once the videotape was admitted into evidence, defendant had a right to see the videotape, but he was not prejudiced by not viewing the videotape. The trial court also concluded that there was insufficient evidence to find that defendant's insomnia and mood swings affected his ability to assist in his own defense or understand the proceedings. Defendant's trial counsel testified that he reviewed defendant's psychiatric records after defendant complained that he was not receiving medication for a bipolar disorder. Trial counsel recalled that the records indicated that medications had been prescribed prior to incarceration to help with defendant's mood, not his ability to comprehend. Trial counsel testified that he never observed any behavior that caused him to question defendant's competency. Defendant appealed.

ANALYSIS

The Post-Conviction Hearing Act (725 ILCS 5/122--1 *et seq.* (West 2006)) provides a remedy to criminal defendants who claim that their constitutional rights were violated at trial. *People v. Whitfield*, 217 Ill. 2d 177, 840 N.E.2d 658 (2005). A postconviction proceeding is a collateral attack upon a final judgment; its purpose is not to determine guilt or innocence, but to inquire into constitutional issues which have not been, and could not have been, previously adjudicated. *Whitfield*, 217 Ill. 2d 177, 840 N.E.2d 658. In a postconviction proceeding, the

petitioner bears the burden of proving that a substantial constitutional violation occurred at trial.

As stated, defendant raised two claims of ineffective assistance of counsel. First, defendant argued that his trial counsel was ineffective because defendant was never allowed to view the victim's forensic interview, either before or during trial, and defense counsel did not object to the trial judge viewing the videotape in chambers outside of defendant's presence. Secondly, defendant argued that his trial counsel was ineffective in failing to request a hearing prior to trial to determine defendant's fitness to stand trial.

In order to demonstrate ineffective assistance of counsel, a defendant must show that his counsel's performance was so deficient that it fell below an objective standard of reasonableness and the defendant was prejudiced by his counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984). The defendant bears the burden of overcoming a strong presumption in favor of finding that counsel's advocacy was effective. *People v. Albanese*, 104 Ill. 2d 504, 473 N.E.2d 1246 (1984). The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Caballero*, 126 Ill. 2d 248, 533 N.E.2d 1089 (1989). In reviewing the denial of a postconviction petition after an evidentiary hearing, we will not

reverse the trial court's ruling unless it was manifestly erroneous. *People v. Pendleton*, 223 Ill. 2d 458, 861 N.E.2d 999 (2006).

Defendant contends that it was ineffective assistance of counsel to not allow defendant to view the videotaped forensic interview of the victim. To the extent that defendant sought to view the videotape before trial, we do not need to decide whether defendant had a right to view the discovery because defendant should have been allowed to view the videotape when it was admitted as evidence at trial. Compare *People v. Davison*, 292 Ill. App. 3d 981, 686 N.E.2d 1231 (1997) (defendant does not have a constitutional right to discovery materials) with *People v. Smith*, 268 Ill. App. 3d 574, 645 N.E.2d 313 (1994) (concealment of police reports constituted ineffective assistance of counsel). However, for the reasons that follow, we find that the trial court's ruling that defendant failed to show that he was prejudiced by this error was not manifestly erroneous.

To show prejudice, a defendant must show that there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *Strickland*, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052. Defendant's counsel fully discussed the contents of the forensic interview with defendant, and defendant had the opportunity to view the police reports that were made from the interview. In addition, the

victim testified at defendant's trial. Since defendant cannot satisfy the prejudice prong of the *Strickland* test, he is not entitled to relief on his first claim of error.

Defendant's second contention is that his trial counsel was ineffective for failing to request a fitness hearing. In rejecting this claim, the trial court found that the record reflected that defendant clearly understood his rights when he waived a jury trial and that he was able to communicate throughout the proceedings. We conclude that the denial of this claim was not manifestly erroneous.

A defendant is presumed fit to stand trial. 725 ILCS 5/104-10 (West 2006); *People v. Griffin*, 178 Ill. 2d 65, 687 N.E.2d 820 (1997). Fitness refers to defendant's ability to function within the context of a trial, not his competence in other areas. *People v. Eddmonds*, 143 Ill. 2d 501, 578 N.E.2d 952 (1991). A defendant is fit to stand trial if he is able to understand the nature and purpose of the proceedings against him and is able to assist in his defense. *People v. Easley*, 192 Ill. 2d 307, 736 N.E.2d 975 (2000).

The mere fact that a defendant suffers from some mental illness or disorder does not necessarily raise a *bona fide* doubt as to his fitness to stand trial. *Eddmonds*, 143 Ill. 2d 501, 578 N.E.2d 952. Defendant relies solely on the fact that he was not given his prescribed medication. He has pointed to no evidence

in the record that would indicate his inability to understand the proceedings or cooperate with his counsel. At the evidentiary hearing, the postconviction judge found nothing in the record to indicate that defendant was unable to understand the proceedings or assist defense counsel. Defendant's counsel testified that he never observed anything that indicated a need for a competency examination. Since there was no showing that the performance of defendant's trial counsel was objectively unreasonable, the trial court did not err in denying the petition.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Knox County is affirmed.

Affirmed.