

No. 1-11-1152

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 4641
)	
MALVIN WASHINGTON,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Where a *pro se* defendant is representing himself, it is not reversible error for the court to refuse to appoint a lawyer for a fitness hearing, and defendant's trial counsel was not ineffective when a new fitness hearing was not requested, when there was no *bona fide* doubt of defendant's fitness to stand trial.

¶ 2 Following a bench trial, defendant Malvin Washington was convicted and sentenced to natural life imprisonment for the first-degree murders of Jessie Brown and Jacqueline Lemons, stemming from a robbery in their apartment on January 30, 2007. Prior to trial, defendant fired the assistant public defender (APD) and represented himself over the next 10 months, including

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his own fitness hearing. The trial court adjudicated the *pro se* defendant fit for trial and later reappointed the public defender, who represented defendant throughout his bench trial.

¶ 3 On this direct appeal, defendant claims: (1) that the trial court erred when it declined to appoint counsel to represent defendant during his fitness hearing; (2) that the trial court committed reversible error when it did not order a new fitness hearing; and (3) that defendant's counsel was ineffective for not requesting a new fitness hearing. In response, the State argues: (1) that there was no *bona fide* doubt of defendant's fitness for trial; (2) the trial court was not required to appoint counsel for the *pro se* defendant during the fitness hearing; and (3) defendant was not entitled to a new fitness hearing. For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 Prior to trial, the assistant public defender informed the trial court that defendant had mental health issues and that he was waiting for a psychiatrist's report to complete a mental health investigation on defendant's behalf. Later, the APD was replaced by a new APD. Defendant then fired the new APD, who withdrew, and defendant elected to represent himself. The State later requested a fitness hearing, and then defendant requested counsel. The trial court denied defendant's request and advised him that he "just can't have an attorney for this, an attorney for that, and then not have it for that." Defendant subsequently represented himself at his own fitness hearing and the trial court found him fit to stand trial.

¶ 6 Several months later defendant requested counsel for trial and the previous APD was reappointed and the case proceeded to a bench trial. The trial court found defendant guilty of the first-degree murders of Jessie Brown and Jacqueline Lemons. Later at a sentencing hearing, after

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hearing factors in mitigation and aggravation, defendant was sentenced to natural life in prison. In his appeal, defendant claims only that the trial court erred when it denied him his right to counsel at his fitness hearing and claims his counsel was ineffective when she failed to request a new fitness hearing prior to trial.

¶ 7

I. Pretrial Proceedings

¶ 8 Defendant was arraigned on March 14, 2007. In a proceeding on August 16, 2007, defendant complained that he did not receive copies of the police reports in his case, and he informed the trial court that he intended to file a motion at the next court date to proceed *pro se*. However, defendant did not file a motion at the next proceeding and the assistant public defender continued to represent him.

¶ 9 On January 9, 2008, defendant again told the trial court that he wished to fire his attorney and proceed *pro se*. When the trial court responded that it would order a behavioral clinical examination (BCX) to determine if defendant was fit to represent himself, the APD interjected and advised the trial court that:

“Judge, for the record, at this point we are in the middle of a very intensive, very magnified mental health investigation on [defendant’s] behalf. There are serious issues involved. I don’t have the reports back from the psychiatrist, but needless to say, he does have mental health problems at this point, Judge.”

The APD suggested that the trial court forgo a BCX and wait to receive the psychiatrist’s reports. Defendant stated that he had been waiting for over one year for trial and that he was requesting a

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speedy trial, but the trial court advised him that it would wait for the psychiatric reports before it would make a determination of defendant's fitness to represent himself.¹ At that point, defendant interrupted the trial court and said: "[t]he doctor make that determination," and defendant walked away as the trial court continued to talk to him. The case was then continued several more times, during which the State advised the trial court that it would not seek the death penalty, and the trial court ordered a BCX for fitness to stand trial and set a court date for April 1, 2008, for defendant to be examined.

¶ 10 On April 1, 2008, the trial court received a report from Dr. Peter Lourgos, a psychiatrist, of Forensic Clinical Services, who opined that defendant was fit to stand trial. In his report, Dr. Lourgos wrote that defendant did not appear to evidence any symptoms of mental illness. At an interview, defendant denied having any symptoms of a significant mood, anxiety, or psychotic disorder, and denied being prescribed any medications. During defendant's interview, he demonstrated an understanding of basic court procedure, and correctly defined several legal phrases, such as "plea bargain," "perjury," and "*pro se*." Defendant was also able to recall his next court date and name of his presiding judge. Dr. Lourgos found that defendant maintained a cynical and sarcastic demeanor towards the legal system and the public defender's office, and defendant believed his attorney was not vigorously working to defend him.

¶ 11 The "Records Reviewed" section of Dr. Lourgos' report indicated that he reviewed four prior evaluations of defendant's fitness for trial, as well as medical records from eight different

¹ The appellate record is silent as to which psychiatrist authored the reports, the psychiatrist's diagnosis of defendant, how many evaluations were conducted and when they took place, and whether the trial court received the reports.

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health centers. While Dr. Lourgos' report identifies the ultimate opinion of each evaluation concerning defendant's fitness to stand trial, it does not explain the basis for the doctors' opinions. The first evaluation was a psychological summary conducted on April 21, 2003, by psychologist Erick Neu of Forensic Clinical Services, which did not provide an opinion of defendant's fitness. However, an addendum to the report on April 30, 2003, opined that defendant was fit to stand trial, while a second addendum found defendant unfit on January 19, 2004. Two additional psychiatric summaries were conducted by Philip Pan, M.D., and Mathew S. Markos, M.D., of Forensic Clinical Services on June 13, 2003, and July 7, 2005, respectively. Both doctors opined that defendant was fit to stand trial. The fourth was a psychiatric report completed by Michael First, M.D., on October 31, 2007, in which he opined that defendant was not competent to stand trial.

¶ 12 Dr. Lourgos' report also states that defendant was hospitalized several times, and that "[t]he majority of [defendant's] hospitalizations involved active use of illicit substances." Dr. Lourgos wrote that his review of defendant's medical records revealed "a significant history of Polysubstance Dependence including opioids, cocaine, and alcohol." Defendant also exhibited "vague, atypical psychotic symptoms such as paranoia and auditory hallucinations," and the "majority of these symptoms appeared to have been induced by psychoactive substances." Dr. Lourgos wrote that defendant admitted to using alcohol, cocaine, cannabis, and heroin for 15 to 20 years. During a recent hospitalization in January 2007, defendant "endorsed daily use of cocaine and alcohol."

¶ 13 The report also states that defendant was adjudicated unfit to stand trial on unrelated

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charges in 2005, and was admitted to the Elgin Mental Health Center for three weeks. The medical records from his treatment reveal that his clinicians did not believe that defendant suffered from an “Axis I Disorder, other than substance abuse,” and defendant was suspected of “malingering.” Upon his discharge, defendant was diagnosed with “Alcohol Dependence, Cocaine Dependence, Cannabis Abuse, and Personality Disorder, NOS.” While Dr. Lourgos acknowledges that other clinical evaluations have reached differing conclusions concerning defendant’s psychological health, his report does not explain what those contrary diagnoses were.

¶ 14 On May 1, 2008, defendant appeared before the trial court and again stated that he did not want to be represented by a new APD, who had replaced the previous APD. The new APD told the trial court that defendant had decided that he did not want her representing him. The trial court asked if defendant had received a BCX, and the new APD responded that he had previously been found unfit to stand trial, but since then, he had been reexamined and found fit.² The trial court provided defendant with a copy of the indictment to review and advised him that he potentially faced a natural life sentence if he were convicted.

¶ 15 After reviewing the indictment, defendant acknowledged that he understood the charges against him. Defendant then requested to have counsel other than the public defender’s office appointed, and the trial court denied his request. The trial court then asked defendant to state his age and educational background, to which defendant refused to answer, claiming that such information was already “in the record.” The trial court asked defendant if anyone was forcing

² Dr. Lourgos’ report indicates that Dr. First’s evaluation of defendant on October 31, 2007, was the most recent prior examination that did not find defendant competent to stand trial. However, First’s report was not admitted in evidence at defendant’s fitness hearing and it does not appear in the appellate record.

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him to represent himself, to which defendant responded that the answer to that question was “in the record too.” Defendant then claimed that the trial court was not providing him with proper representation, and that, if he decided to represent himself, the trial court would then have to appoint him “assigned counsel.” The trial court advised defendant that it would not appoint counsel if he chose to proceed *pro se*, and admonished defendant of the consequences of self-representation. Defendant then claimed that the trial court was forcing him to represent himself because his appointed attorney was not competent to represent him. The trial court responded that the APD was from the murder task force and had been handling murder cases for the past 15 years. When asked how long he had been in school or if he had ever represented himself before, defendant again responded that the information was also “all in the record.” The trial court then allowed the public defender to withdraw, and defendant filed a *pro se* motion for discovery. At the next court proceeding, the State requested a fitness hearing, to which defendant objected, and the case was continued.

¶ 16 Defendant appeared *pro se* at the May 14, 2008, proceeding, and he again objected to a fitness hearing, claiming that a doctor had already examined him. The trial court explained that the doctor had to testify in court to make his finding a part of the record. Defendant then requested a copy of the fitness report and claimed that he might seek a second opinion, to which the trial court advised him that the opinion was that he was fit for trial. After reviewing the fitness report, defendant again objected to a hearing, claiming “as far as my knowledge, I only know of a hearing when you’re found unfit.” The trial court again explained that the report had found him fit and that it needed to be made part of the record. Defendant then requested an

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attorney for the fitness hearing, claiming “I took this case to represent myself at trial. I did not take this case to represent myself at a fitness hearing. Therefore, I believe I should have an attorney for that hearing.” The trial court refused and advised defendant that he “just can’t have an attorney for this, an attorney for that, and then not have it for that.” The trial court then denied defendant’s request to hold the fitness hearing before a different judge. Despite defendant’s repeated objections, the trial court scheduled a fitness hearing.

¶ 17 At the fitness hearing, both sides waived opening statements, and Dr. Peter Lourgos, a psychiatrist from Forensic Clinical Services, was the only witness who was called. When the State asked for the trial court to find that Dr. Lourgos was an expert in the field of psychiatry, the following exchange occurred:

“TRIAL COURT: Mr. Washington, do you wish to voir dire the witness?

DEFENDANT: Your Honor, I don’t understand the question.

TRIAL COURT: Do you wish to voir dire the witness with regard to his being a doctor and being qualified as a psychiatrist?

DEFENDANT: I never seen this guy before, your Honor.

TRIAL COURT: Do you wish to question him as to his qualifications?

DEFENDANT: I don’t understand the question.

TRIAL COURT: Okay. The Court will qualify him as an

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expert in forensic psychiatry.”

The State asked Dr. Lourgos to identify his report, to which defendant objected without explanation and was overruled. Dr. Lourgos testified that, in preparation for his report, he had interviewed defendant for 35 minutes. When asked why the interview was so brief, Dr. Lourgos explained that defendant refused to discuss his past psychiatric history and would only talk about fitness criteria. Based on this interview, as well as a review of all the medical records, Dr. Lourgos opined that defendant was fit to stand trial because he did not suffer from a major mental illness. Though Dr. Lourgos acknowledged that there were contrary diagnoses in some of the mental health reports that Dr. Lourgos reviewed, he testified that the vast majority of defendant’s past psychiatric hospitalizations were a result of substance abuse and not a primary mental illness. Defendant objected to this testimony and the trial court overruled the objection. Dr. Lourgos also testified that defendant did not exhibit any “psychiatric symptoms” during the interview, and the fact that he sought to fire the assistant public defender was not indicative of a psychiatric disorder. Defendant objected to Dr. Lourgos’ testimony that defendant told him that he intended to fire the assistant public defender and the trial court again overruled the objection. The defendant did not cross-examine Dr. Lourgos, and the trial court admitted his report into evidence. Both sides waived closing arguments and the trial court found defendant fit to stand trial. The State tendered defendant formal answers to discovery, and the case was continued.

¶ 18 Over the next 10 months, defendant represented himself, and the trial judge retired from the bench. Defendant filed motions before two subsequent judges, and then a third judge for two months until he retired as well. Judge Charles Burns subsequently presided over the case, with

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minor interruptions, from March 9, 2009, until its conclusion.

¶ 19 On March 9, 2009, the trial court denied defendant's motion for the appointment of a bar attorney. Defendant then sought to withdraw his motion to quash arrest and suppress evidence, and informed the trial court that he desired to proceed directly to trial. The trial court asked defendant if he planned to call any witnesses, and defendant responded that he would not and would instead offer into evidence medical records that the State had provided him. Defendant insisted several more times that he was demanding a speedy trial and would not agree to a continuance; however, the case was continued for a hearing on defendant's pending motion to dismiss the indictment.

¶ 20 At the next proceeding, defendant requested that the trial court reappoint the public defender, explaining that he could not do the case by himself because it was "too much" to handle, and apologized for his behavior in prior court appearance. The trial court reappointed the previous APD, who withdrew defendant's motion to dismiss the indictment.

¶ 21 On August 26, 2009, the trial court held a suppression hearing on a motion to quash arrest and suppress evidence. Defendant disagreed with his APD in court regarding whether an absent witness was necessary for the motion. The APD told the trial court that the witness would be needed only for rebuttal, but defendant accused her of "doing the motion the way the prosecutor want her to do it," and attempted to fire her again. The trial court advised defendant that sometimes attorneys have to disagree with their clients because they know the law, but defendant responded that attorneys also "know how to present the evidence favorable to the prosecutor, too," and he informed the trial court that he wanted to withdraw his motion if he could not call

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the witnesses that he wanted. Defendant continually insisted that he wanted to withdraw his motion and fire his attorney, but the trial court advised him that they would proceed on the motion. Defendant continued to argue with the trial court until he had to be physically removed from the courtroom by sheriffs. After a recess, defendant apologized for his behavior and told the trial court that he had calmed down and was ready to proceed on the motion. After the suppression hearing, the trial court denied defendant's motion to quash arrest and suppress evidence and continued the case.

¶ 22 On November 16, 2009, defendant requested that the trial court set the next court date for some time in February, March, or April because he suffered from paranoid schizophrenia and the increased security in the courtroom bothered him. When the trial court informed him that it added extra security because of his actions, defendant acknowledged that he understood but he was afraid of "coming out here and being tricked." Defendant informed the trial court that he was not on medication and the extra security was bothering him. The trial court asked defendant whether he wanted to be sent to Cermak Hospital, but defendant declined and stated that he just wanted "to get [the case] over with." Defendant again demanded trial and suggested that he would represent himself again if it would lead to a quicker resolution in his case; however, the trial court advised defendant that, by firing the public defender, he would likely delay trial rather than expedite the process.

¶ 23 In a court proceeding on April 10, 2010, defendant claimed that he had won a case against one of the prosecuting attorneys, in Skokie, Illinois, and told the trial court that "it seems like you know now he's over here with me with this problem." The prosecuting attorney informed the

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trial court that he had never tried a case in Skokie, but that he had been the supervisor of the preliminary hearings unit for 10 years and that his name had frequently appeared on discovery motions. Defendant then complained that his attorneys were not cooperating with him and, after cutting off the trial court in mid-sentence, threatened to proceed *pro se* again if his attorney continued to be uncooperative with him. The trial court then discussed which motions defendant wished to file, and defendant agreed to postpone the discussion of firing the public defender until the next court date.

¶ 24 At the next proceeding, on May 18, 2010, defendant accused his attorneys of hiding evidence from him and, when he began to discuss the facts of the case, the trial court interrupted and prevented him from doing so. Defendant repeatedly tried to fire his attorneys, and, though the trial court advised him that it would not grant his request at that point in time, defendant continued to insist that his attorneys no longer represented him. Defendant then attempted to file *pro se* motions, but the trial court returned them to his APD. Defendant requested that the trial court return his motions only to him because he did not want the APD “discussing nothing with the prosecutor that belongs to me.” Both of defendant’s attorneys stated that they would not discuss anything with the prosecutor, and the case was continued.

¶ 25 On June 8, 2010, defendant asked the trial court to confirm that he had a right to represent himself, and the trial court responded affirmatively, but defendant declined to proceed *pro se* at that time. At the next two court proceedings, defendant did not address the trial court and allowed his attorneys to proceed with their investigation.

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¶ 26 The case appeared before another judge on July 30, 2010, and the APD informed the trial court that the case had been accidentally reassigned. She explained that defendant had asked her to file a motion for a substitution of judge and that defendant had been unable to meet with her when she attempted to speak with him about it because he was at Cermak Hospital. Defendant told the trial court that he had been unfairly labeled as a “problem child,” and that he had fired his attorneys at a previous court date, but the APD corrected him, saying that defendant had fired her in the past but that she was back on the case. Defendant then accused the APD of announcing “her office as being the State’s Attorney,”³ and he told the trial court that he did not want to be represented by the State’s Attorney. The APD explained that she had made a slip of tongue, and that she had started to say “Assistant State-” before she corrected herself to say “Assistant Public Defender.” Defendant refused to accept this explanation and the trial court’s assurances that the APD did not work for the State’s Attorney. At the next court date, the case returned to Judge Burns, who indicated that he would be keeping the case.

¶ 27 On August 17, 2010, another judge sat for Judge Burns, and defendant claimed that he had filed a motion for substitution of judge for cause against Judge Burns because he had refused to allow him to fire his attorneys, and that every time defendant tried to exercise his constitutional right, Judge Burns would “flood the courtroom with security officers.” The trial court advised defendant that he would need a hearing to determine if he could represent himself, but defendant then accused his attorneys of using the renovation of the court building as a stall tactic, and he informed the trial court that he had no one representing him because the APD

³ The transcript of the APD’s statement does not appear in the appellate record.

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announced herself as a State's Attorney. Defendant again attempted to file *pro se* motions, but the trial court advised him that he could not do so unless he represented himself. The case was continued several more times and proceeded to trial on February 28, 2011. The APD represented defendant throughout trial.

¶ 28

II. Trial

¶ 29 Defendant's bench trial began on February 28, 2011. In its opening statement, the State claimed that the evidence showed that defendant broke into the apartment of Jessie Brown and Jacqueline Lemons demanding money, and that he beat and stabbed the two to death when they did not accede to his demands. The State called 12 witnesses, including the responding police officers and apartment building residents who testified that they observed defendant standing over the victims while holding a shiny object, and that he then fled the crime scene. After briefly losing sight of defendant in a foot chase, police officers later found defendant hiding under a stairway in an alley nearby the crime scene. Defendant had blood on his face and clothing, and the police sent defendant to a nearby hospital to receive treatment for injuries. Forensic investigators testified that the crime scene was covered in broken glass and blood, and that they recovered a knife, a broken metal rod, and a shovelhead and blade. Blood samples tested from the knife matched the DNA profiles of Lemons and defendant, and samples recovered from defendant's clothing matched the DNA profiles of Brown, Lemons, and himself. The medical examiner testified that both victims had stab wounds and skull fractures consistent with being struck over the head with a shovel or metal rod.

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¶ 30 The defense called three witnesses, including defendant, who testified on his own behalf. Defendant testified that he used the apartment as his mailing address, and that he stopped by on the night of the crime to check if he had received his tax refund. Upon entering the apartment, he observed Brown lying on the floor with a woman on top of him who was bleeding. Defendant lifted the woman off the floor, sat her in a chair, and then left. As he left, he spoke with a police officer and told him that it looked like there had been a fight in the apartment. Defendant then went to a house where bootleg liquor was being sold and ordered a pint at the door. Before he received his drink, defendant heard people yelling that police officers were in the alley, so he hid underneath a staircase, where the police later found and arrested him. During his arrest, police officers beat defendant so badly that he had to be sent to the hospital for treatment. Defendant testified that he did not take his medication for schizophrenia that night because he was drinking. Defendant's brother testified that he observed defendant speaking with a police officer outside of the apartment, and that defendant did not have any blood on him and the conversation was calm.

¶ 31 After the bench trial, the trial court found defendant guilty of the murders, finding that Brown and Lemons were murdered and that there was "no doubt" that the motive was robbery. The trial court noted that defendant was observed standing over the victims holding a shiny object before he fled the crime scene, and that the forensic investigators later determined that defendant had the victims' blood on his clothing. The trial court found that the State's witnesses were credible, and defendant and his brother were not. After considering all the evidence, the trial court found that the State proved defendant's guilt of the murders beyond a reasonable doubt. The trial court set posttrial motions and sentencing for March 31, 2011.

¶ 32

III. Posttrial Proceedings

¶ 33 At the next proceeding, the defense acknowledged receipt of the presentence investigation report and filed a posttrial motion for a new trial. Defendant then informed the trial court that his attorneys were not speaking with him and that he wanted to represent himself again. The APD then explained that she had not refused to speak with defendant, but that she did refuse to provide him copies of every transcript related to his case. The trial court advised defendant to speak with his attorney concerning the motions he wanted to file, and the case was continued.

¶ 34 The hearing on defendant's posttrial motion and sentencing was held on April 12, 2011, and defendant told the trial court that he wanted to proceed *pro se* and that he had a motion that included numerous claims of ineffective assistance of counsel. The trial court advised defendant that he might want counsel for his posttrial motion, but defendant pointed out that he had made multiple claims of ineffective assistance of counsel and that his attorney could not claim that she herself was ineffective. The trial court then held a *Krankel* hearing to determine if defendant's attorneys had been ineffective. Defendant accused his attorneys of failing to investigate and present evidence that would have exonerated him.

¶ 35 After the hearing, the trial court found that defendant had not presented a *prima facie* case of ineffective assistance of counsel. Defendant once again told the trial court that the APD had presented herself as a State's Attorney, and the APD again explained that it was misunderstanding due to her slip of the tongue. The trial court noted that it had known the APD for some time and that she was a public defender. The trial court then allowed defendant to proceed *pro se*, but it noted that his decision to do so was not wise. When the trial court advised

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defendant that he faced a potential life sentence, defendant replied that “[r]ight now you can give me the death penalty.” Defendant chose to represent himself and presented a *pro se* supplemental posttrial motion for a new trial and in arrest of judgment, which included multiple claims of ineffective assistance of counsel, including claims that one of the arresting officers threw a pair of bloody gloves on him, that he was denied his right to a speedy trial, that the State did not prove him guilty beyond a reasonable doubt, and that the indictment against him had not been “filed in open court.” The trial court denied defendant’s motion.

¶ 36 The State then presented defendant’s criminal history in addition to a victim impact statement. Defendant did not present any mitigation evidence and, even though his sister was present in court, she did not testify. Defendant presented a statement in allocution in which he denied committing the crime and claimed that his trial counsel was ineffective. The trial court informed defendant that it had no discretion and that it was required by statute to sentence him to natural life in prison. The trial court further noted that it believed the sentence was correct, and it advised defendant of his right to appeal. The trial court denied defendant’s motion to reconsider the sentence, and he appealed. The trial court appointed the State Appellate Defender to represent defendant, and his direct appeal is at issue in this case.

¶ 37 On September 16, 2011, defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)). In his petition, defendant claimed that his indictment and conviction were void because the State improperly cited to “1992 ILCS,” a statutory system which defendant alleges never came into existence. The trial court dismissed defendant’s petition on November 30, 2011, and defendant

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timely appealed. The Office of the State Appellate Defender was appointed to represent defendant. After reviewing defendant's appeal, the appellate defender determined that defendant's claim was without arguable merit. The appellate defender moved to withdraw and submitted a memorandum in support pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). Copies of the memorandum and motion were sent to defendant and he was advised that he might submit any points in support of his appeal, which he did not. After reviewing the appellate record and counsel's memorandum, we found no issues of arguable merit and granted the appellate defender leave to withdraw as counsel, and we affirmed the trial court's dismissal of defendant's petition. *People v. Washington*, No. 1-12-0221 (2013) (unpublished order pursuant to Supreme Court Rule 23).

¶ 38

ANALYSIS

¶ 39 On this direct appeal, defendant claims: (1) that he was denied his right to counsel where the trial court denied his request to appoint counsel for his fitness hearing; (2) that the trial court erred when it failed to order a new fitness hearing; and (3) that his trial counsel was ineffective for failing to request a new fitness hearing. In response, the State argues: (1) that there was no *bona fide* doubt of defendant's fitness; (2) that the trial court was not required to appoint counsel because defendant chose to proceed *pro se*; and (3) that defendant did not have a right to a new fitness hearing. For the following reasons, we affirm.

¶ 40

I. Right to Counsel

¶ 41 Defendant's first argument is that his constitutional right to counsel was violated because the trial court denied his request for counsel at his fitness hearing. The sixth amendment to the

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United States Constitution (U.S. Const., amend. VI) guarantees an accused in a criminal proceeding the right to the assistance of counsel “at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected.” *People v. Baker*, 92 Ill. 2d 85, 90 (1982) (quoting *Mempa v. Rhay*, 389 U.S. 128, 134 (1967)); *People v. Jiles*, 364 Ill. App. 3d 320, 328 (2006). On the other hand, defendant also has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so. *People v. Blaney*, 324 Ill. App. 3d 221, 225 (2001) (citing *Baker*, 92 Ill. 2d at 90). The right of self-representation does not carry with it a corresponding right to legal assistance, and one choosing to represent himself must be prepared to do just that. *People v. Redd*, 173 Ill. 2d 1, 38 (1996); *People v. Taggart*, 233 Ill. App. 3d 530, 556-57 (1992). An intelligently and knowingly made waiver of counsel applies to all phases of the trial. *Redd*, 173 Ill. 2d at 24; *Baker*, 92 Ill. 2d at 91-92. More importantly, the constitutional right to self-representation does not require a court to permit a “hybrid” representation in which a defendant alternates between proceeding *pro se* and being represented by counsel. *Blaney*, 324 Ill. App. 3d at 225; *Redd*, 173 Ill. 2d at 38; *Taggart*, 233 Ill. App. 3d at 557. The trial court's ruling on a defendant's decision to represent himself at trial will be reversed only if the court abuses its discretion. *People v. Ortega*, 209 Ill. 2d 354, 359 (2004); *People v. Shelton*, 401 Ill. App. 3d 564, 574 (2010). “A clear abuse of discretion occurs when ‘the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.’ ” *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)).

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¶ 42 In the case at bar, the trial court did not abuse its discretion when it denied defendant's request for counsel at his fitness hearing because defendant indicated that he still intended to represent himself at trial. When the trial court advised defendant that it would hold a fitness hearing, defendant stated, "I took this case to represent myself at trial. I did not take this case to represent myself at a fitness hearing. Therefore, I believe I should have an attorney for that hearing." Defendant thus expressed his desire to represent himself at trial, but in the meantime wanted to have counsel appointed during his fitness hearing. The trial court denied defendant's request, explaining to defendant that he could not alternatively switch between having an attorney during certain parts of the trial process and represent himself during others. The trial court is not required to permit a "hybrid" representation. *Blaney*, 324 Ill. App. 3d at 225; *Redd*, 173 Ill. 2d at 38; *Taggart*, 233 Ill. App. 3d at 557. As a result, the trial court did not abuse its discretion when it denied defendant's request for counsel at his fitness hearing.

¶ 43 Defendant claims that the trial court erred because his mental incapacity required the trial court to appoint counsel at his fitness hearing. However, as noted, defendant's waiver of his right to counsel must be a voluntary, knowing, and intelligent waiver. *Jiles*, 364 Ill. App. 3d at 328 (citing *People v. Haynes*, 174 Ill. 2d 204, 235 (1996)). Where a *bona fide* doubt exists as to a defendant's competency to stand trial, that defendant cannot intelligently waive his constitutional right to representation by counsel, and permitting him to represent himself is reversible error. *People v. Esang*, 396 Ill. App. 3d 833, 841 (2009) (citing *People v. Rath*, 121 Ill. App. 3d 548, 550-51 (1984)).

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¶ 44 A defendant is presumed fit to stand trial (725 ILCS 5/104–10 (West 2000)) and is entitled to a fitness hearing “only when a *bona fide* doubt of his fitness to stand trial or be sentenced is raised.” *People v. McCallister*, 193 Ill. 2d 63, 110 (2000) (citing *People v. Johnson*, 183 Ill. 2d 176, 193 (1998)); *People v. Eddmonds*, 143 Ill. 2d 501, 512 (1991). A defendant is unfit “if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense.” 725 ILCS 5/104-10 (West 2000). “Fitness speaks only to a person's ability to function within the context of trial; it does not refer to sanity or competence in other areas.” *People v. Coleman*, 168 Ill. 2d 509, 524 (1995). A person may be fit for trial although his mind may be otherwise unsound. *Coleman*, 168 Ill. 2d at 524. “Relevant factors which a trial court may consider in assessing whether a *bona fide* doubt of fitness exists include a defendant's ‘irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial.’ [Citation.] The representations of defendant's counsel concerning the competence of his client, while not conclusive, are another important factor to consider.” *Eddmonds*, 143 Ill. 2d at 518 (quoting *Drope v. Missouri*, 420 U.S. 162, 180 (1975)). However, “there are ‘no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated.’ ” *Eddmonds*, 143 Ill. 2d at 518 (quoting *Drope*, 420 U.S. at 180). Defendant bears the burden of proving there is a *bona fide* doubt of his fitness. *People v. Hanson*, 212 Ill. 2d 220, 222 (2004) (citing *Eddmonds*, 143 Ill. 2d at 518).

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¶ 45 In the instant case, there was no *bona fide* doubt that defendant was fit to stand trial because defendant demonstrated that he understood the nature and purpose of the trial. There was no evidence shown that he did not understand the nature and purpose of the trial. Prior to his fitness hearing, defendant informed the trial court that he desired to proceed *pro se*, and when the trial court admonished defendant concerning his right to represent himself, defendant volunteered that he was facing 44 counts. After the trial court allowed the public defender to withdraw, defendant filed an answer to discovery himself.

¶ 46 Defendant's understanding of the nature of his trial was further corroborated by Dr. Lourgos' report and testimony detailing his interview with defendant. Dr. Lourgos reported and testified that defendant understood that he was charged with murder, which he correctly identified as a felony, and he was able to describe the difference between a felony and a misdemeanor. Defendant correctly indicated who the presiding judge in his case was, and knew that his next court date was scheduled for April 1, 2008. Defendant spontaneously identified the various plea options of guilty or not guilty and the implications of each plea. He told the psychiatrist that he had accepted plea bargains in some of his prior criminal cases. Defendant also correctly explained to the psychiatrist several legal concepts, including: the definition of a bench trial, the process of plea bargaining, a defendant's fifth amendment right against self-incrimination, the burden of proof of the State, and the act of perjury and its penalties. Further, defendant correctly identified to the psychiatrist the roles of his counsel, State's Attorney, jury, judge, and witnesses at trial. Defendant's responses all demonstrate a thorough understanding of the nature of the court proceedings and the criminal process.

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¶ 47 Moreover, Dr. Lourgos opined that defendant was fit to stand trial, explaining that defendant's recent hospitalizations were the result of substance abuse and not a psychiatric disorder. His report noted that defendant had been found fit in three prior evaluations in the previous five years. Dr. Lourgos' report explained that defendant was adjudicated unfit to stand trial on unrelated charges in 2005, and was admitted to the Elgin Mental Health Center for three weeks for evaluation and treatment. However, the medical records from his treatment reveal that his clinicians did not believe defendant suffered from an "Axis I Disorder, other than substance abuse," and suspected defendant of "malingering." Upon his discharge, defendant was diagnosed with "Alcohol Dependence, Cocaine Dependence, Cannabis Abuse, and Personality Disorder, NOS."

¶ 48 Dr. Lourgos wrote that his review of defendant's medical records revealed a significant history of polysubstance dependence, including opioids, cocaine, and alcohol. Dr. Lourgos noted that defendant admitted to using alcohol, cocaine, cannabis, and heroin for 15 to 20 years, and defendant "endorsed daily use of cocaine and alcohol" during a recent hospitalization in January 2007. Dr. Lourgos opined that defendant suffered from polysubstance abuse rather than a mental disorder, and determined that the majority of defendant's "vague, atypical psychotic symptoms such as paranoia and auditory hallucinations" appeared to have been induced by psychoactive substances. Considering defendant's understanding of the legal process and his prior psychiatric evaluations, we cannot say that there was a *bona fide* doubt that defendant was fit to stand trial.

¶ 49 Defendant claims that his performance at the fitness hearing showed a *bona fide* doubt of his fitness because he seemingly objected at random, did not understand how to *voir dire* Dr.

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Lourgos, did not cross-examine Dr. Lourgos, and did not offer an opening statement or closing argument. However, while defendant may not have understood every legal concept and did not represent himself perfectly, defendant's responses in his interview with Dr. Lourgos show that he thoroughly understood the nature and purpose of the proceedings against him. Also, defendant disputes the trial court's consideration of Dr. Lourgos' report, arguing that a trial court cannot simply accept an expert's conclusion to establish fitness. *Esang*, 396 Ill. App. 3d at 839; *People v. Contorno*, 322 Ill. App. 3d 177, 179 (2001). However, the trial court in the cases cited by defendant merely accepted the stipulation of the expert's findings and did not conduct an analysis of the expert's opinions at a fitness hearing. Here, there was no stipulation to Dr. Lourgos' opinion, and the trial court held a fitness hearing to examine the basis for his findings.

Furthermore, the trial court considered defendant's prior evaluations that were referenced in the report, as well as other factors including defendant's demeanor, lack of serious irrational behavior, and the statements by his counsel, all of which combined do not show a *bona fide* doubt of defendant's fitness to stand trial.

¶ 50 Defendant also argues that the statements by his attorney showed a *bona fide* doubt when his APD advised the trial court that a mental health investigation was being performed on behalf of defendant and that defendant had "mental health problems" at that point. Defendant also claims that a *bona fide* doubt was raised when his APD informed the trial court that defendant had been evaluated twice, and that one report found him fit, while the other found him unfit. The representations of defendant's counsel, while an important factor to consider, are not conclusive of defendant's competence. *Eddmonds*, 143 Ill. 2d at 518 (citing *Drope*, 420 U.S. at 180). Here,

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though counsel believed that defendant had mental health issues, he stated that his mental status was still being evaluated to determine whether he was fit to stand trial. Defendant's counsel never indicated that defendant was not cooperating in his defense, or that she believed defendant was not fit to stand trial. Moreover, Dr. Lourgos' psychiatric report and testimony found defendant fit and indicated that, while defendant maintained a cynical view of his attorney, he nonetheless was able to assist his attorney in his defense. As such, counsels' statements do not show a *bona fide* doubt of defendant's fitness.

¶ 51 Also, defendant claims that his behavior showed that he was not fit to stand trial because he told the trial court during his fitness hearing that he did not know who Dr. Lourgos was. Also, defendant argues that his demeanor showed that he was not fit because he frequently interrupted the trial court and on one occasion walked away while the judge was still speaking to him. However, evidence of defendant's disruptive behavior and a sociopathic personality does not necessarily show a *bona fide* doubt of defendant's fitness to stand trial. *People v. Smith*, 253 Ill. App. 3d 948, 953 (1993). Where defendant understood the nature of the proceedings and was able to assist in his defense, his belligerent behavior alone does not show a *bona fide* doubt of defendant's fitness to stand trial. *People v. Nicks*, 23 Ill. App. 3d 435, 440-41 (1974). Despite defendant's argumentative behavior and claimed inability to recognize Dr. Lourgos, defendant was still able to define several legal concepts, identify the roles of the attorneys and judge, and knew the name of his presiding judge, his next court date, the charges he faced, and the penalties if found guilty. The evidence showed that defendant had a sufficient understanding of the nature of the proceedings and was able to assist in his defense. We cannot say that his conduct with the

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trial court raised a *bona fide* doubt of defendant's fitness to stand trial. Since there was no *bona fide* doubt of defendant's fitness, the trial court did not abuse its discretion when it denied defendant's request to be represented by counsel for his fitness hearing only.

¶ 52 II. Failure To Request A New Fitness Hearing

¶ 53 Next, we consider defendant's claim that the trial court should have ordered a new fitness hearing *sua sponte*. The due process clause of the fourteenth amendment of the United States Constitution bars the criminal prosecution of a defendant who is not competent to stand trial. U.S. Const., amend. XIV; *Medina v. California*, 505 U.S. 437, 439 (1992); *People v. Mitchell*, 189 Ill. 2d 312, 326 (2000). A defendant is presumed fit to stand trial (725 ILCS 5/104-10 (West 2000)) and is entitled to a fitness hearing "only when a *bona fide* doubt of his fitness to stand trial or be sentenced is raised." *McCallister*, 193 Ill. 2d at 110 (citing *People v. Johnson*, 183 Ill. 2d 176, 193 (1998)); *Eddmonds*, 143 Ill. 2d at 512. A defendant is unfit "if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." 725 ILCS 5/104-10 (West 2000).

¶ 54 Since it is a violation of due process to convict a defendant who is mentally unfit to stand trial, the trial court must order a fitness hearing *sua sponte* once facts are brought to its attention that raise a *bona fide* doubt of defendant's fitness to stand trial. 725 ILCS 5/104-11(a) (West 2008); *McCallister*, 193 Ill. 2d at 110-11 (citing *People v. Murphy*, 72 Ill. 2d 421, 430 (1978)); *People v. Johnson*, 183 Ill. 2d 176, 193 (1998); *Woodard*, 367 Ill. App. 3d at 319. Moreover, "[t]he question of fitness maybe fluid. Someone who appeared to have difficulty understanding his plight in 2007 may be rational in 2008." *People v. Weeks*, 393 Ill. App. 3d 1004, 1010 (2009).

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Even if a defendant is competent at the beginning of trial, a trial court “must always be alert to circumstances suggesting a change that would render” a defendant “unable to meet the standards of competence to stand trial.” *Drope v. Missouri*, 420 U.S. 162, 181 (1975).

¶ 55 There is a *bona fide* doubt as to defendant's fitness when there is a “real, substantial and legitimate doubt” assessed against an objective standard. *Eddmonds*, 143 Ill. 2d at 518. Since “fitness” refers only to an ability to function at trial, and not to competence in other areas (*People v. Easley*, 192 Ill. 2d 307, 320 (2000)), “a mental disturbance or an instance of psychiatric treatment does not necessarily raise a bona fide doubt of fitness.” *Woodard*, 367 Ill. App. 3d at 319; *Eddmonds*, 143 Ill. 2d at 519. There are “no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated.” *Drope*, 420 U.S. at 180. A trial court may consider defendant's irrational behavior, demeanor at trial, and any medical opinion on the defendant's competence to stand trial. *People v. Harris*, 206 Ill. 2d 293, 304 (2002); *People v. Burt*, 205 Ill. 2d 28, 39 (2001); *Easley*, 192 Ill. 2d at 319; *Eddmonds*, 143 Ill. 2d at 518. A reviewing court must keep in mind that the trial court had “the best opportunity to observe defendant's behavior and assess its level of propriety.” *People v. Woodard*, 367 Ill. App. 3d 304, 320 (2006). Accordingly, the question of whether a *bona fide* doubt of fitness exists is a fact-specific inquiry (*People v. Tapscott*, 386 Ill. App. 3d 1064, 1077 (2008)) and is generally a matter within the discretion of the trial court (*People v. Sandham*, 174 Ill. 2d 379, 382 (1996)). As noted, “ ‘an abuse of discretion occurs when the [trial court's] ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same

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view.’ ” *Sharp*, 391 Ill. App. 3d at 955 (quoting *Robertson*, 312 Ill. App. 3d at 469).

¶ 56 In the case at bar, we cannot say the trial court abused its discretion by failing to hold a hearing *sua sponte* into defendant's fitness for trial whenever he did something out of the ordinary. Since the trial court initially found defendant fit to stand trial, defendant's subsequent actions in the proceedings did not amount to a *bona fide* doubt of his fitness. Defendant continued to represent himself for a total of 10 months prior to trial, and in that time he continued to display a sufficient understanding of the process in the criminal justice system. As a *pro se* litigant, defendant filed a motion to quash his arrest and suppress evidence, arguing that the police lacked probable cause. Defendant additionally filed a motion *in limine* to exclude his prior convictions, and in his motion he directly responded to the State's arguments concerning intent and the absence of an innocent state of mind. Defendant also filed *pro se* motions for substitution of judge, to produce documents, to view videotapes, and to dismiss the indictment, and successfully moved for telephone privileges and access to the law library.

¶ 57 As noted, Dr. Lourgos' testimony opined that defendant was fit to stand trial finding that he was cognizant of the charges, understood the nature and purpose of the legal proceedings, and was able to assist his counsel in his defense, if he chose to. The trial court considered the psychiatrist's report and testimony and found defendant fit to stand trial. Since his fitness hearing, defendant did not exhibit any new behavior that contradicted Dr. Lourgos' findings that would have raised a *bona fide* doubt as to defendant's fitness.

¶ 58 In fact, defendant's main argument is that there was a *bona fide* doubt that he was fit to stand trial because he was unable to assist his counsel in his defense. Defendant argues that he

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was an unmedicated paranoid schizophrenic, and that, despite Dr. Lourgos' finding that some of his past psychiatric symptoms were a product of substance abuse, defendant continued to exhibit delusional behavior even though he had not used any illicit substance since he was incarcerated. Defendant claims that his paranoia manifested itself: (1) from his violent behavior in one proceeding; (2) his statement to the trial court that the courtroom security bothered him because he was an unmedicated paranoid schizophrenic and was afraid of being tricked; (3) in his absence from appearing in one court proceeding; (4) and in his repeated allegations that his APD worked for the State's Attorney. As a result, defendant repeatedly tried to fire his attorney, and on one occasion he attempted to file a *pro se* motion, despite being represented by counsel, and requested that the trial court return a document to him only and not share it with his attorney. Also, defendant attempted to withdraw his motion to quash his arrest and suppress evidence that his attorney filed on his behalf because he believed she was "doing the motion the way the prosecutor want her to do it." Defendant thus claims that he was unable to assist his attorney because of the paranoia caused by his mental disorder.

¶ 59 However, defendant's actions are not inconsistent with Dr. Lourgos' finding that defendant maintained a "cynical" attitude towards the public defender's office, and that he believed that his attorney was "not vigorously working to defend him." Despite these cynical views, Dr. Lourgos opined that defendant's "beliefs did not appear secondary to a psychotic disorder but secondary to underlying characterological traits." As such, the trial court was aware of defendant's cynicism at the time it originally found him fit and had sufficient evidence to find that defendant's behavior was not the result of a mental disorder. Thus, defendant's contentions

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that his paranoid beliefs prevented him from assisting his attorney merely show that defendant's cynical views were a character trait and not the product of a psychological disorder as opined by Dr. Lourgos. There was insufficient evidence, if any, to show that defendant did not have the ability to assist in his defense and, more importantly, that it was caused by a mental or physical condition (725 ILCS 5/104-10 (West 2000)). As a result, we cannot say that the trial court abused its discretion when it did not find that there was a *bona fide* doubt that defendant was able to assist his attorney.

¶ 60 Furthermore, "fitness" refers only to the ability to function at trial, and not to the competence of the party. *People v. Easley*, 192 Ill. 2d 307, 320 (2000). Thus, even if the trial court found defendant was an unmedicated paranoid schizophrenic, that disorder alone would not necessarily require a finding of unfitness. *People v. Harris*, 206 Ill. 2d 293, 305 (2002) ("Taking as true defendant's allegations that he suffers from mental impairments as they are stated in his post-conviction psychological assessments [citation], [defendant's] allegations do not necessarily establish that defendant was unfit."); see *Woodard*, 367 Ill. App. 3d at 319 ("a mental disturbance or an instance of psychiatric treatment does not necessarily raise a *bona fide* doubt of fitness"). Despite his cynicism, defendant still exhibited a sufficient understanding of the proceedings and the nature of the trial. Moreover, defendant was not successful in keeping trial documents, witness, or any other pertinent information from his attorneys. Defendant does not point to any statements by his counsel complaining of his noncooperation or behavior that was impeding his trial. In fact, defendant proceeded to trial and he testified lucidly in his own defense. We cannot say that the two instances cited by defendant, where defendant requested the return of his *pro se*

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motion and where he attempted to withdraw his counsel's motion, constituted a *bona fide* doubt that he was unable to adequately assist in his defense.

¶ 61 Defendant argues that this case is similar to *People v. Harris*, 113 Ill. App. 3d 663 (1983). In *Harris*, the defendant received outpatient mental health treatment as a child and was later hospitalized for two years, and his previous release from prison was conditioned upon obtaining psychiatric treatment, which he never received. *Harris*, 113 Ill. App. 3d at 666-67. After trial, the defendant was placed in restraints at one point, and also attempted suicide. *Harris*, 113 Ill. App. 3d at 666-67. In *Harris*, we found that the trial court should have held a fitness hearing because there was a *bona fide* doubt that the defendant was fit to stand trial. *Harris*, 113 Ill. App. 3d at 667. Defendant argues that, like the defendant in *Harris*, he had a history of prior hospitalizations, had previously been adjudicated unfit and committed for treatment, and had an outburst at one point where he had to be removed from the courtroom. Defendant thus argues that the similar factual nature of the case demands a similar finding of a *bona fide* doubt of fitness.

¶ 62 However, *Harris* is factually distinguishable from the case at bar because, in *Harris*, the defendant was unavailable for sentencing because he had eaten pieces of glass and metal in an attempt to commit suicide. *Harris*, 113 Ill. App. 3d at 666. Here, defendant never attempted suicide or had suicidal thoughts. Further, the defendant in *Harris* never received a fitness hearing, so the trial record was silent on the potential cause of the defendant's symptoms or any past diagnosis or finding of fitness. *Harris*, 113 Ill. App. 3d at 668. In the instant case, defendant had a fitness hearing, and Dr. Lourgos' report and testimony detailed defendant's prior

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psychiatric history and opined that defendant was fit to stand trial. Here, there was no *bona fide* doubt of defendant's fitness to stand trial.

¶ 63 III. Ineffective Assistance of Counsel

¶ 64 Lastly, we address defendant's claim that his counsel was ineffective for failing to request a new fitness hearing. "The sixth and fourteenth amendment of the United States Constitution guarantee the fundamental right of a defendant in a criminal case to be effectively assisted by counsel." *People v. Young*, 347 Ill. App. 3d 909, 927 (2004) (quoting *People v. Spann*, 332 Ill. App. 3d 425, 429 (2002) (citing U.S. Const., amends. VI, XIV)). A successful claim of ineffective assistance of counsel requires a two-pronged showing of both deficient representation and prejudice. *Strickland v. Washington*, 466 U.S. 668, 690 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525 (1984). If we can dismiss on the second prong for failure to show prejudice, we need not discuss the first prong. *Albanese*, 104 Ill. 2d at 527. For the first prong, to show deficient representation, defendant must show that "counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688; *Albanese*, 104 Ill. 2d at 525.

¶ 65 For the second prong, the test for determining prejudice under *Strickland* is whether a reasonable probability exists that the trial court would have found defendant unfit had he received another fitness hearing. *People v. Mitchell*, 189 Ill. 2d 312, 334 (2000). The Illinois Supreme Court in *Mitchell* explicitly overruled its holding in *People v. Brandon*, 162 Ill. 2d 450 (1994), which found that a defendant could meet the prejudice prong of *Strickland* merely by showing that he would have received a fitness hearing had his attorney requested one. *Mitchell*, 189 Ill. 2d at 333-34 (citing *People v. Brandon*, 162 Ill. 2d 450, 458-59 (1994)). However, four

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months later, our supreme court in *Easley* applied a different standard to determine prejudice and instead found that “defendant must show that facts existed at the time of his trial that would have raised a *bona fide* doubt of his ability to understand the nature and purpose of the proceedings and to assist in his defense.” *People v. Easley*, 192 Ill. 2d 307, 319 (2000). Thus, the *Easley* court, which did not cite to *Mitchell*, found that a defendant satisfies the second prong of the *Strickland* test “only if he shows that the trial court would have found a *bona fide* doubt of his fitness and ordered a fitness hearing if it had been apprised of the evidence now offered.” *Easley*, 192 Ill. 2d at 319. Recent decisions by the Illinois Appellate Court and the Illinois Supreme Court have followed either *Mitchell* or *Easley*. *People v. Pitsonbarger*, 205 Ill. 2d 444, 470 (2002) (citing *Mitchell*); *People v. Barrow*, 195 Ill. 2d 506, 538 (2001) (same); *People v. Jones*, 191 Ill. 2d 194, 199 (2000) (same); *People v. Moore*, 189 Ill. 2d 521, 533 (2000) (same); *People v. Hayden*, 338 Ill. App. 3d 298, 313 (2003) (same); *People v. Alberts*, 383 Ill. App. 3d 374, 374 (2008) (same); *People v. Gilbert*, 379 Ill. App. 3d 106, 115 (2008) (same); *People v. Dominguez*, 331 Ill. App. 3d 1006, 1017 (2002) (same); *People v. Johnson*, 209 Ill. 2d 227, 246 (2002) (citing *Easley*); *People v. Shum*, 207 Ill. 2d 47, 57 (2003) (same); *People v. Harris*, 206 Ill. 2d 293, 304 (2002) (same); *People v. Logan*, 352 Ill. App. 3d 73, 82 (2004) (same); *People v. Tursios*, 349 Ill. App. 3d 126, 130 (2004) (same); *People v. Hill*, 345 Ill. App. 3d 620, 627 (2003) (same); *People v. Burt*, 205 Ill. 2d 28, 39 (2001) (same); *People v. Chamberlain*, 354 Ill. App. 3d 1070, 1073 (2005) (same); *People v. Vernon*, 346 Ill. App. 3d 775, 779 (2004) (same); *People v. Henney*, 334 Ill. App. 3d 175, 192 (2002) (same).

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¶ 66 However, even under the more lenient “*bona fide* doubt” standard as set forth in *Easley*, defendant's ineffective assistance of counsel claim does not satisfy the prejudice prong of the *Strickland* test. *Easley*, 192 Ill. 2d at 319. As noted, defendant has not shown that the trial court was faced with facts that amounted to a *bona fide* doubt of defendant’s fitness to stand trial. Dr. Lourgos’ testimony and report opined that defendant did not suffer from a mental illness and that he understood the nature of the court proceedings, which was further evidenced by the fact that defendant filed several appropriate motions and made coherent arguments when he represented himself for 10 months. Furthermore, Dr. Lourgos opined that defendant was able to cooperate with his attorney if he chose to do so. In light of these facts, defendant’s counsel was not ineffective because there was no *bona fide* doubt that defendant was fit to stand trial.

¶ 67

CONCLUSION

¶ 68 For the foregoing reasons, we affirm defendant’s conviction and sentence. First, the trial court did not err when it denied defendant’s request for temporary counsel for his fitness hearing in the absence of a *bona fide* doubt of defendant’s fitness to stand trial. Second, the trial court did not abuse its discretion when it did not order a new fitness hearing *sua sponte* after already finding defendant fit. Third, defendant’s counsel was not ineffective because defendant did not show that he was prejudiced by his counsel’s failure to request a new fitness hearing.

¶ 69 Affirmed.