2013 IL App (1st) 112721-U

SIXTH DIVISION
MAY 24, 2013

No. 1-11-2721

NOTICE: This order was filed under Supreme Court Rule 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 of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 5679
	)	
DARRYL AUSTIN,	)	Honorable
	)	Carol A. Kipperman,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the trial court's summary dismissal of defendant's postconviction petition at the first stage for failing to state the gist of a constitutional claim that there was a *bona fide* doubt of defendant's fitness to stand trial, where his entire claim relies upon his presentence investigation report, which revealed a diagnosis of psychiatric illness 19 years before his trial, and upon medical documents that disclosed his treatment with psychotropic medications had concluded after his trial.

¶ 2 After a bench trial, defendant Darryl Austin was convicted of multiple counts, including: (1) being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2008)); (2) possession of cocaine with intent to deliver within 1,000 feet of a church (720 ILCS 570/407(b)(1) (West

2008)); and (3) unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)). The other counts were either merged at sentencing by the trial court or vacated by this court on appeal. After hearing factors in aggravation and mitigation, the trial court sentenced defendant to three concurrent 15-year terms in the Illinois Department of Corrections (IDOC). Defendant's posttrial motion to reduce his sentence was denied.

¶ 3 Defendant now appeals the summary dismissal of his postconviction petition at the first stage of the postconviction process. He claims that his petition stated the gist of a constitutional violation, namely, that he was tried while there was a *bona fide* doubt as to his fitness to stand trial because he was not taking his prescribed psychotropic medications at that time. Therefore, he asks us to reverse the trial court's summary dismissal order and remand his petition for a second stage postconviction proceeding. For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 I. Bench Trial

¶ 6 At trial, there was no dispute that Oak Park police officers executed a search warrant for apartment 2B at 143 North Mason Avenue in Chicago and that the search revealed a gun, drugs, drug paraphernalia, such as scales and knotted plastic baggies, which are commonly used for drug distribution. There was also no dispute that this apartment was located less than 1,000 feet from a church or that defendant had two prior felony convictions. At trial, defendant disputed only the State's claim that he resided in apartment 2B. Defendant claimed that he resided in apartment 2D.

¶ 7 A. The State's Case

¶ 8 The State presented the testimony of five witnesses at trial: Greg Sorg, the property manager of defendant's apartment building, and Oak Park police officers Michael O'Conner, Victor Barrientos, Kevin Collins and Michael Rallidis, who searched the apartment and arrested defendant.

¶ 9 Greg Sorg testified that, when he took over the management of the apartment building in January of 2009, defendant and Carrie Lash, defendant's girlfriend, were living in apartment 2D. Sorg testified that, at some point, defendant contacted him about moving into apartment 2B, which was a larger one-bedroom apartment. In February 2010, defendant relinquished his keys to apartment 2D and Sorg gave him the keys for apartment 2B.

¶ 10 On February 18, 2010, Sorg visited apartment 2B to address complaints from a downstairs neighbor regarding excessive foot traffic and visitors. Carrie Lash answered the door and Sorg told her to tell defendant about the noise complaints. Sorg testified that he did not know the exact date defendant vacated apartment 2B, but it was the result of an eviction proceeding brought against defendant in August 2010 for unpaid rent while defendant was awaiting trial in this case.

¶ 11 Officer Michael O'Conner testified that, on February 19, 2010, he obtained a search warrant for apartment 2B. The two targets for the search warrant were defendant and Carrie Lash. The search warrant was signed at 5:12 p.m. and Officer O'Conner drove to the Mason Avenue address arriving at approximately 5:45 p.m. Defendant and Lash were already in custody, and the officers on the scene had obtained a key to the apartment from defendant. Inside the apartment,

the police officers observed a blender with a white powdery residue on it and drug paraphernalia. Other items included two digital scales, a sifter with a spoon and toothbrush, a metal grinder, baggies, twist ties, and Dormin, which the officer testified is an over-the-counter medication that is mixed into the drugs to make the drugs appear to be greater in weight and density. Officer O'Conner testified that, based on his experience, these items are commonly used in preparing drugs for distribution. Officer O'Conner worked as a police officer for the Oak Park police department for 10 years with over 50 drug arrests.

¶ 12 Officer O'Conner testified that he searched the bedroom and in the closet he found male clothing and shoes. Female clothing was found in the dresser drawers of the same bedroom. Officer O'Conner recovered a Frontier .22-caliber handgun loaded with two rounds and drugs inside a pair of white shoes. The drugs recovered in the pair of white shoes were in a Tylenol bottle and an unmarked pill bottle. Inside the Tylenol bottle, Officer O'Conner found a knotted plastic bag containing a chunky white substance. The unmarked pill bottle contained a large clear plastic bag and 12 individual smaller knotted baggies. Over $900 was recovered from defendant's person following his arrest and $74 of that was in prerecorded funds. The prerecorded funds had been used in undercover buys from defendant by a confidential informant.

¶ 13 The parties stipulated that the substance from the 12 smaller baggies tested positive for 1.1 grams of cocaine. The substance from the large plastic bag inside of the unmarked pill bottle tested positive for 4.1 grams of heroin. The substance from the Tylenol bottle tested positive for 4.9 grams of heroin.

¶ 14 Next, Officer Victor Barrientos testified that he was on duty on February 19, 2010, when

a search warrant was executed at 5 p.m. that evening. Officer Barrientos observed defendant and Carrie Lash drive up in a vehicle and observed Officer Collins and Donaire execute a stop of the vehicle. Officer Barrientos then proceeded to apartment 2B and assisted O'Conner, Leitl and Jones[1] in executing the search warrant. The officers checked apartment 2B to make sure other people were not inside, and then conducted a physical search. In the bathroom, Officer Barrientos recovered a Q-tip box containing three to four syringes and other items used in the preparation of drugs for distribution.

¶ 15 At the Oak Park Police Department, Officer Barrientos read defendant his Miranda rights and defendant signed an "Oak Park Police Department Advisory of Rights" form. During the ensuing interview, defendant told Officer Barrientos that he lives at 145 North Mason Avenue, apartment 2B with his girlfriend. Defendant also told Officer Barrientos that there was a handgun and drugs in his apartment. Specifically, located in his bedroom, in a closet, and stuffed in an open-style shoe, there were two pill bottles containing drugs. Officer Barrientos contacted Officer O'Conner and related the information obtained from defendant about the handgun and the drugs. Defendant told Officer Barrientos that the gun in his apartment belonged to his cousin, Andrea Austin, who lived in Wisconsin. Defendant's statements to Officer Barrientos were not taped or videorecorded, or memorialized in writing. The officer did later include the substance of his interview in his police report.

¶ 16 Next, Officer Michael Rallidis, an evidence technician, testified that he was directed to photograph the evidence that was collected in apartment 2B. He also took measurements of the

[1] The record does not indicate the first names of Officers Leitl and Jones.

distance from the Light of Liberty Church of God located at 2 West Washington in Oak Park to the location of defendant's apartment. By using a calibrated roller measuring instrument, he determined that the distance from the front door of defendant's apartment to the front door of the church was 739 feet.

¶ 17 Next, Officer Michael Collins testified that on February 19, 2010, at approximately 5 p.m. he conducted pre-warrant surveillance at 145 South Mason Avenue. Officer Collins observed defendant in a vehicle driving westbound on West End Avenue. Defendant was driving and Carrie Lash was in the passenger seat. Officer Collins stopped them on West End Avenue, just east of Mason Avenue, and informed them of the search warrant, served the warrant on defendant, and placed defendant under arrest. Officer Collins asked defendant where he lived and defendant stated 145 South Mason Avenue, apartment 2B. Officer Collins asked defendant whether he had keys to the apartment, so the police would not have to force the door open and defendant gave the officer his key from a key ring. Officer Collins entered defendant's apartment to make sure that there was no one in the apartment. Officer Collins testified that, later that evening, defendant told officers that he had purchased the drugs with his girlfriend Carrie Lash, that he had cut the heroin with Dormin, and that the crack had come prepackaged.

¶ 18 The State then entered into evidence certified copies of defendant's two prior felony convictions which were received without objection. The State rested and defendant moved for a directed finding which the trial court granted in part, dismissing count II (delivery of cocaine within 1,000 feet from a church), count IV (delivery of heroin within 1,000 feet of church), and count VI (delivery of less than 15 grams of cocaine). The trial court denied the motion as to

count I, III, V, VII, VIII, IX, X, and XI.

¶ 19 B. The Defense Case

¶ 20 The defense called Parrish Archer as its only witness. He testified that he is an employee of Pioneer Properties and that his direct supervisor is Greg Sorg. Archer's duties include cleaning around the building, maintenance, and collecting rent. Archer first met defendant a little less than a year ago. Archer testified that defendant lived directly above him at 143 North Mason Avenue. He denied that defendant lived in apartment 2B. Archer testified that he collected rent from defendant for apartment 2D. According to Archer, a man named Charles Peoples lived in apartment 2B.

¶ 21 On cross-examination, Archer admitted that he had previous felony convictions for home invasion, armed robbery, and residential burglary. Archer also admitted that he is not in charge of the apartment leases, and that he is unaware of the actual lessee, and that he only collects the rent.

¶ 22 II. Conviction and Sentencing

¶ 23 On September 29, 2010, the trial court found defendant guilty on the following seven counts: I (armed habitual criminal); III (possession with intent to deliver cocaine within 1,000 feet of a church); V (possession with intent to deliver heroin within 1,000 feet of a church); VII (possession with intent to deliver less than 1 gram of heroin); VIII (unlawful use of a weapon by a felon); X (possession of less than 15 grams of cocaine); and XI (possession of less than 15 grams of cocaine). Defendant was found not guilty on counts: II (delivery of cocaine within 1,000 feet of a church), VI (delivery of heroin within 1,000 feet of a church), VI (delivery of cocaine),

and IX (unlawful use of a weapon by a felon for two live rounds).

¶ 24 At the conclusion of the bench trial, the trial court revoked defendant's bond and continued the matter to October 27, 2010, to allow for the preparation of a presentence investigation report (PSI). On October 27, 2010, the parties acknowledged receipt of the PSI, and the defense requested a fitness evaluation (BCX), because defendant's PSI revealed some potential psychiatric issues, which the defense counsel was not aware of at the time of trial. The PSI revealed that defendant was diagnosed with manic depression and paranoia in 1991. At the time of the PSI, defendant was taking the following medications: Zoloft, Respida, Prolixin, Respidal, Klonopin, and Sinequan and had contemplated suicide. The trial court ordered the BCX.

¶ 25 On November 23, 2010, Dr. Nishad Nadkarni, a staff psychiatrist with Cook County Forensic Clinical Services, examined defendant in order to render an opinion regarding defendant's fitness to stand trial, his fitness with medications, and his fitness for sentencing. Dr. Nadkarni opined that defendant appeared to be malingering both psychiatric and cognitive impairments. According to Dr. Nadkarni's report, there was no evidence of a true deficiency in defendant's ability to understand the charges against him or the nature of the courtroom proceedings. There was also no deficiency in his ability to assist with his defense, if he chose to do so. Dr. Nadkarni opined that defendant was fit to stand trial, and was fit for sentencing.

¶ 26 Dr. Nadkarni also noted that, at the time of his report, defendant was prescribed Zoloft (an antidepressant), Klonopin (an anti-anxiety drug), Benadryl (to treat side effects), Risperdal (an antipsychotic drug), and Doxepin (a sleep aid). According to Dr. Nadkarni, there was no

evidence of any side effects or difficulties from defendant's medications that would impair his fitness status. The report did not reveal whether defendant was taking any of these medications at the time of his trial.

¶ 27 At sentencing, the trial court merged the drug offenses into one count of possession with intent to deliver cocaine within 1,000 feet of a church. Specifically, the trial court merged counts V, VII, X and XI into count III. After hearing factors in aggravation and mitigation, the trial court sentenced defendant to three concurrent 15-year terms on each of the following three counts: I (armed habitual criminal); III (possession with intent to deliver within 1,000 feet of a church); and VIII (unlawful use of a weapon by a felon).

¶ 28 The mittimus, entered on January 26, 2011, mistakenly reflected a total of five drug convictions and sentences. Defendant's posttrial motion to reduce sentence was denied, and defendant filed a notice of appeal on February 24, 2011.

¶ 29 III. Direct Appeal

¶ 30 On direct appeal, defendant raised three claims for review. First, he claimed that his conviction for armed habitual criminal and for unlawful use of a weapon by a felon based on the possession of a handgun in his home must be vacated because the statutes violated his constitutional right to bear arms for self-defense. Second, defendant claimed that his conviction for unlawful use of a weapon by a felon must be vacated under the one-act, one-crime rule because it was predicated on the same act of possessing a single handgun, which formed the basis of his armed habitual criminal conviction. Third, defendant claimed that his mittimus must be corrected to reflect two convictions for possession of a controlled substance with intent to deliver

within 1,000 feet of a church.

¶ 31 This court did not find persuasive defendant's constitutional claims that the armed habitual criminal statute violated his second amendment right to bear arms. However, we did vacate defendant's conviction for unlawful use of a weapon by a felon, because it violated the one-act, one crime rule. We also agreed that the trial court had sentenced defendant to only one drug offense, and, thus, we ordered the mittimus corrected to reflect only one drug conviction. *People v. Austin*, 2012 IL App (1st) 110692-U, ¶ 56.

¶ 32 IV. Postconviction Proceedings

¶ 33 On July 25, 2011, defendant filed this *pro se* postconviction petition, in which he alleges, among other things, that his right to due process was violated because he was tried while he was unfit for trial. His fitness claim was based on remarks in his presentence investigation report.

¶ 34 Defendant alleges in his petition that he was unfit for trial because he was not taking his psychotropic medications at that time. He attached medical reports showing his mental history and treatment with psychotropic medications since his trial had concluded. According to two attached reports from Cermak Mental Health Services at the Cook County Jail, defendant was referred for mental health evaluation at the conclusion of his trial due to his "suicidal ideations" and depression.

¶ 35 Defendant also attached several pages of medical progress notes and a medication administration record from September and October of 2010 (the time between his trial and sentencing). These records indicate that several medications were prescribed and administered during that time frame, including Zoloft, Thorazine, Prolixin, Respidal, Klonopin, and Doxepin.

¶ 36 On August 26, 2011, the trial court summarily dismissed defendant's postconviction petition at the first stage as frivolous and patently without merit. The trial court found there was no *bona fide* doubt as to defendant's fitness prior to and during trial. It ordered a BCX before sentencing based solely on what was reported concerning defendant's mental health history in his PSI. The trial court found defendant's conduct and demeanor before and during trial did not raise a *bona fide* doubt as to his fitness to stand trial, and, therefore, it summarily dismissed defendant's postconviction petition, and this appeal followed.

¶ 37 ANALYSIS

¶ 38 Defendant appeals the summary dismissal of his postconviction petition at the first stage and asks us to remand for a second-stage postconviction proceeding. He claims that his petition stated the gist of a constitutional violation, namely, that he was tried while there was a *bona fide* doubt as to his fitness to stand a trial because he was not taking his psychotropic medications at that time. For the following reasons, we affirm the decision of the trial court.

¶ 39 I. Stages of a Postconviction Proceeding

¶ 40 The Postconviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2008)) provides a means by which a defendant may challenge his or her conviction or sentence for violations of federal or state constitutional rights. *People v. Pendleton*, 233 Ill. 2d 458, 471 (2006) (citing *People v. Whitfield*, 217 Ill. 2d 177, 183 (2005)). To be entitled to postconviction relief, a defendant must show that he or she has suffered a substantial deprivation of his or her federal or state constitutional rights in the proceeding that produced the conviction or sentence being challenged. 725 ILCS 5/122-1(a) (West 2008); *Pendleton*, 223 Ill. 2d at 471(citing *Whitfield*, 217

Ill. 2d at 183).

¶ 41 In noncapital cases, the Act provides for three stages. *Pendleton*, 223 Ill. 2d at 471-72. At the first stage, the trial court has 90 days to review a petition and determine whether the petition states the gist of a constitutional claim. 725 ILCS 5/122-2.1(a)(2) (West 2008); *People v. Hodges*, 234 Ill. 2d 1, 11 (2009). The gist of a constitutional claim means that a petition that is not frivolous or patently without merit shall survive summary disposition. *Hodges*, 234 Ill. 2d at 11. The Illinois Supreme Court has held that, at the first stage, the trial court evaluates only the merits of the petition's substantive claim, and not its compliance with procedural rules. *People v. Perkins*, 299 Ill. 2d 34, 42 (2007). If the trial court does not dismiss the petition within that 90-day period, the trial court must docket it for further consideration. 725 ILCS 5/122-2.1(b) (West 2008); *Pendleton*, 223 Ill. 2d at 472.

¶ 42 At the first stage, the trial court "examines the petition independently, without input from the parties." *People v. Brown*, 236 Ill. 2d 175, 184 (2010) (citing *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996)). The petition's allegations "must be taken as true and liberally construed." *Brown*, 236 Ill. 2d at 193. Additionally, "[i]n considering the petition, the trial court may examine the court file of the criminal proceeding, any transcripts of the proceeding, and any action by the appellate court." *Brown*, 236 Ill. 2d at 184 (citing 725 ILCS 5/122-2.1(c) (West 2008)).

¶ 43 The issue at this first stage is whether the petition presents an "arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 11. A petition lacking an arguable basis in law or fact is one "based on an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*,

234 Ill. 2d at 16. A claim completely contradicted by the record is an example of an indisputably meritless legal theory. *Hodges*, 234 Ill. 2d at 16. "Fanciful factual allegations include those that are fantastic or delusional." *Hodges*, 234 Ill. 2d at 17.

¶ 44 In the case at bar, defendant's petition was summarily dismissed at the first stage. However, if it had proceeded to the second stage, the Act provides that counsel may be appointed for the defendant, if the defendant is indigent. 725 ILCS 5/122-4 (West 2008); *Pendleton*, 223 Ill. 2d at 472. After defense counsel has made any necessary amendments to the petition, the State may move to dismiss it. *Pendleton*, 223 Ill. 2d at 472 (discussing 725 ILCS 5/122-5 (West 2008)). If the State moves to dismiss, the trial court may hold a dismissal hearing, which is still part of the second stage. *People v. Coleman*, 183 Ill. 2d 366, 380 (1998). A trial court is foreclosed "from engaging in any fact-finding at a dismissal hearing because all well-pleaded facts are to be taken as true at this point in the proceeding." *Coleman*, 183 Ill. 2d at 380.

¶ 45 If the trial court denies the State's motion to dismiss, or if the State chooses not to file a dismissal motion, then the State "shall" answer the petition. 725 ILCS 5/122-5 (West 2008); *Pendleton*, 223 Ill. 2d at 472. Unless the trial court allows further pleadings (725 ILCS 5/122-5 (West 2008)), the proceeding then can advance to the third stage, which is an evidentiary hearing. 725 ILCS 5/122-6 (West 2008); *Pendleton*, 223 Ill. 2d at 472-73. At the evidentiary hearing, the trial court "may receive proof by affidavits, depositions, oral testimony, or other evidence," and "may order the [defendant] brought before the court." 725 ILCS 5/122-6 (West 2008).

¶ 46 In the case at bar, defendant asks us to reverse trial court's summary dismissal of his petition and remand for second-stage proceedings. The question of whether a trial court's

summary first-stage dismissal was in error is purely a question of law, which an appellate court reviews *de novo*. *People v. Petrenko*, 237 Ill. 2d 490, 296 (2010). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 47 II. *Bona Fide* Doubt of Fitness

¶ 48 A defendant is presumed fit to stand trial. 725 ILCS 5/104-10 (West 2008). A defendant is unfit "if because his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist his defense." 725 ILCS 5/104-10 (West 2008). "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." *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991) (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). 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).

¶ 49 The fact that a defendant suffers from mental disturbances or requires psychiatric treatment does not automatically result in a *bona fide* doubt of his fitness. *Eddmonds*, 143 Ill. 2d

at 519. "Fitness speaks only to a person's ability to function within the context of a trial. It does not refer to sanity or competence in other areas. A defendant can be fit for trial although his or her mind may be otherwise unsound." *People v. Easley*, 192 Ill. 2d 307, 320 (2000) (citing *People v. Murphy*, 72 Ill. 2d 421, 432 (1978)); see also *Eddmonds*, 143 Ill. 2d at 519-20. Moreover, "[t]he question of fitness may be 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).

¶ 50 In the case at bar, defendant argues that he was unfit for trial because he was not taking his psychotropic medications at the time of his trial. Defendant further argues that because the fitness evaluation (BCX) conducted by Dr. Nadkarni between defendant's trial and his sentencing did not reveal whether he was taking any psychotropic medications at the time of his trial and the doctor did not render an opinion regarding defendant's fitness without the medications, the BCX does not contradict his allegation that he was not taking his psychotropic medications at the time of his trial and that he was unfit to stand trial without his medications. For the following reasons, we do not find defendant's argument persuasive.

¶ 51 Defendant's entire argument relies upon his PSI, which revealed a diagnosis of manic depression and paranoia in 1991, and some medical documents showing his treatment with psychotropic medications after his trial had concluded. However, what is relevant to the inquiry of *bona fide* doubt of fitness is whether, "because of his mental or physical condition, he [was] unable to understand the nature and purpose of the proceedings against him or to assist in his defense." 725 ILCS 5/104-10 (West 2008). The fact that defendant was not taking any

psychotropic medications at the time of his trial is relevant only if there was a medical opinion that he was incompetent to stand trial without the medications, or there were facts during defendant's trial that indicated he was unable to understand the nature and purpose of his trial or to assist his defense without the medications. Here, defendant does not make such a showing.

¶ 52 The mere fact that defendant was diagnosed with a psychiatric illness 19 years before his trial, and that he started treatment with psychotropic medications after his trial does not have a bearing on his ability to understand and to assist in his defense during his trial. As noted, the fact that a defendant suffers from mental disturbances or requires psychiatric treatment does not automatically result in a *bona fide* doubt of the defendant's fitness. *Eddmonds*, 143 Ill. 2d at 519. "A defendant can be fit for trial although his or her mind may be otherwise unsound." *People v. Easley*, 192 Ill. 2d 307, 320 (2000) (citing *People v. Murphy*, 72 Ill. 2d 421, 432 (1978)).

¶ 53 Here, the record does not reveal, and defendant does not provide, any other basis that would arguably raise a *bona fide* doubt of his fitness. There is no indication of any " 'irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial' " (*Eddmonds*, 143 Ill. 2d at 518 (quoting *Drope*, 420 U.S. at 180)) that would support a finding of unfitness. To the contrary, defendant demonstrated understanding of his waiver of a jury trial, his right to testify and his personal choice not to testify at trial, and his right to appeal. Defendant was experienced in the criminal justice system. Defendant did not engage in any outburst in court or demonstrate any conduct that would indicate he was unfit. In dismissing defendant's postconviction petition, the trial judge noted that she had not had any *bona fide* doubt of fitness based on defendant's conduct before or during trial. Furthermore, there is no affidavit or

indication from defendant's trial counsel that he was unable to understand the nature and purpose of the proceedings or unable to assist in his own defense. There is nothing in the record demonstrating that trial counsel had concerns about defendant's fitness before or during the trial. In fact, the first time that defense counsel raised any issue regarding defendant's fitness was approximately a month after the trial, when defendant's PSI revealed a previous diagnosis of manic depression and paranoia in 1991. Lastly, in the fitness evaluation conducted between defendant's trial and his sentencing, Dr. Nadkarni found defendant fit to stand trial and fit for sentencing. Notably, Dr. Nadkarni found that defendant appeared to be malingering in both psychiatric and cognitive impairment during the evaluation.

¶ 54 We cannot find that defendant's claim that he was not taking prescribed psychotropic medications at the time of his trial provides an arguable basis that there was a *bona fide* doubt of defendant's fitness to stand trial when his claim is based solely on his PSI, which revealed his diagnosis of psychiatric illness in 1991, and some medical documents showing treatment with psychotropic medications after trial. Accordingly, defendant's petition was properly dismissed at the first stage.

¶ 55 CONCLUSION

¶ 56 For the foregoing reasons, defendant has failed to state the gist of a constitutional claim. Accordingly, we affirm the trial court's dismissal of defendant's postconviction petition at the first stage.

¶ 57 Affirmed.