

2014 IL App (2d) 130317-U
No. 2-13-0317
Order filed October 30, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-2172
)	
ANTHONY BECK,)	Honorable
)	James C. Hallock,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in declining to *sua sponte* hold a fitness hearing before sentencing defendant, but three fees imposed on defendant were improperly assessed and should be modified.
- ¶ 2 Following a bench trial, defendant, Anthony Beck, was convicted of a violation of section 3(a) of the Sex Offender Registry Act (Act) (730 ILCS 150/3(a) (West 2010)). The trial court revoked his probation and sentenced him to seven years' imprisonment. Defendant appeals the revocation of his probation and raises two issues: (1) whether the trial court abused its discretion by failing to *sua sponte* order a fitness hearing before sentencing and (2) whether various fines

and fees must be vacated or reduced. For the following reasons, we conclude that (1) the trial court did not abuse its discretion in declining to hold a fitness hearing before sentencing defendant and (2) the DNA analysis fee and the sex offender registration fee must be vacated and the \$480 probation services fee must be reduced. The judgment is affirmed in part, modified in part, and vacated in part.

¶ 3

I. BACKGROUND

¶ 4 On September 30, 2011, defendant was charged with violating section 3(a) and section 6 of the Act following his failure to report a change in address. On November 3, 2011, defendant pleaded guilty, and the trial court sentenced him to 24 months' probation. As a condition of probation, defendant was required to obey all federal and state laws. The court also ordered him to pay several fees, including: (1) a \$200 DNA analysis fee, (2) a \$500 sex offender registration fee, and (3) a \$480 probation services fee.

¶ 5 The State petitioned to revoke defendant's probation, and on May 21, 2012, the trial court issued an arrest warrant on the ground that defendant violated his probation by committing misdemeanor disorderly conduct and criminal trespass on April 9, 2012. The trial court based its decision on the testimony of defendant's probation officer, Michael Terese, who testified that he believed defendant had committed the offenses. Terese also stated that he was concerned that defendant was a danger to himself and others because he was "severely mentally ill."

¶ 6 Terese explained that defendant initially was assigned to a female probation officer but was reassigned to Terese after defendant mistakenly came to believe that he was married to the female officer because they had the same last name. Terese also testified that defendant had made numerous delusional statements including that he stopped taking his medication and stopped drinking alcohol because he "make[s] it in [his] stomach." According to defendant, he

“drink[s]” a lot of bread and pop and eats candy, which ferments in his stomach and results in a high and the production of Seroquel, an antipsychotic medication. Defendant also said he no longer urinates because he vomits to relieve body waste. Defendant explained to Terese that his urination problem would be corrected with a surgical procedure, which would be paid for by a bank owned by defendant’s family. Terese also reported that defendant said he was from the year 26 B.C.

¶ 7 Following defendant’s arrest, his counsel requested that he be evaluated to determine whether he was fit to stand trial. The trial court appointed Dr. Agoritsa Barczak, who evaluated defendant on June 21, 2012. Dr. Barczak concluded that, while he was obviously mentally ill, he was fit to stand trial. Dr. Barczak noted in her report that defendant had previously been diagnosed with bipolar disorder and schizoaffective disorder. Defendant exhibited illogical thinking, stated that he was innocent of the original sex offense, experienced hallucinations, and had attempted suicide because he hallucinated a vision of the devil. While in jail, defendant took antipsychotic drugs, including Risperdal. Following a hearing, the trial court entered an order revoking defendant’s probation for his failure to obey all state laws.

¶ 8 At the sentencing hearing on October 18, 2012, the trial court asked defendant various questions to determine whether he understood where he was and the nature of the proceedings. Defendant stated that he was taking a psychotropic medication, Risperidone, which made it difficult for him to think, but he was able to describe the roles of the parties in court. At first, defendant said he was inside the Kane County jail, but when the trial court asked whether he understood he was in a courtroom, defendant said “yeah.” First, defendant stated that the role of the public defender was “[t]o protect me, and keep me out of trouble and try to get me released.” Second, he stated that the prosecutor’s “function is basically to find many curricular [sic]

activities as possible, to find me guilty as charged.” Third, he stated that the role of the court was to “judge [him] and put [him] in a correct role to stand to [his] life and make sure [he did] everything correct.”

¶ 9 Defendant also made a few comments indicating that he is severely mentally ill; including stating that he saw in the room a bug that was “big as *** half my body, like from my shoulder to shoulder.” The trial court observed that there were some bugs in the building but none that large. Based on defendant’s description of the roles of the judge, the prosecutor, and defense counsel, the court determined that defendant was fit for sentencing. The trial court imposed the sentence, defendant moved to reconsider the sentence as excessive, and the court denied the postsentencing motion. This timely appeal followed.

¶ 10

II. ANALYSIS

¶ 11

A. Fitness

¶ 12 We first address defendant’s contention that the trial court abused its discretion by not *sua sponte* conducting a fitness hearing before defendant’s sentencing on the State’s petition to revoke probation. Due process prohibits the prosecution of a defendant who is unfit to stand trial. *People v. Tuduj*, 2014 IL App (1st) 092536, ¶ 85 (citing *People v. Easley*, 192 Ill. 2d 307, 318 (2000)). A defendant is presumed to be fit to stand trial or to plead, and be sentenced; and 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 2012).

¶ 13 Defendant concedes that he failed to raise the fitness issue in the trial court, but this court has held that fitness is a fundamental right that is subject to plain error review. *People v. Lucas*,

388 Ill. App. 3d 721, 726 (2009). However, before considering plain error, we must first determine whether error occurred at all. See *People v. Harris*, 225 Ill. 2d 1, 31 (2007).

¶ 14 A defendant is entitled to a fitness hearing only when a *bona fide* doubt of the defendant's fitness is raised. *Tuduj*, 2014 IL App (1st) 092536, ¶ 85 (citing *Easley*, 192 Ill. 2d at 318); 725 ILCS 5/104-11(a) (West 2012). "A '*bona fide* doubt' has been characterized as a 'real, substantial and legitimate doubt,' and the test is an objective one." *Tuduj*, 2014 IL App (1st) 092536, ¶ 87 (quoting *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991)). There are no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed. *Tuduj*, 2014 IL App (1st) 092536, ¶ 87. The question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated. *Tuduj*, 2014 IL App (1st) 092536, ¶ 87. Therefore, the question of whether a *bona fide* doubt of fitness exists is a fact-specific inquiry. *Tuduj*, 2014 IL App (1st) 092536, ¶ 87. The trial court is in the best position to observe a defendant's conduct, and therefore, whether a *bona fide* doubt of fitness to proceed exists is a matter that lies within the discretion of that court. *Tuduj*, 2014 IL App (1st) 092536, ¶ 87 (citing *People v. Simpson*, 204 Ill. 2d 536, 550 (2001)).

¶ 15 Relevant factors in assessing whether a *bona fide* doubt of fitness exists include "a defendant's irrational behavior, the defendant's demeanor at trial, and any prior medical opinion on the defendant's competence to stand trial." *Easley*, 192 Ill. 2d at 319. The trial court's firsthand observations of a defendant's demeanor and behavior have also been considered. *People v. Hanson*, 212 Ill. 2d 212, 223-24 (2004). The representations of the defendant's counsel concerning the competence of his client, while not conclusive, are another important factor to consider. *Eddmonds*, 143 Ill. 2d at 518. However, an assertion by counsel that a

defendant is unfit does not, of itself, raise a *bona fide* doubt of competency. *Eddmonds*, 143 Ill. 2d at 519.

¶ 16 Fitness to stand trial and mental illness are not synonymous. *Tuduj*, 2014 IL App (1st) 092536, ¶ 89. “ ‘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.’ ” *Tuduj*, 2014 IL App (1st) 092536, ¶ 89 (quoting *Easley*, 192 Ill. 2d at 320). “ ‘[T]he existence of a mental disturbance or the need for psychiatric care does not necessitate a finding of *bona fide* doubt since “[a] defendant may be competent to participate at trial even though his mind is otherwise unsound.” ’ ” *Tuduj*, 2014 IL App (1st) 092536, ¶ 89 (quoting *Hanson*, 212 Ill. 2d at 224-25 (quoting *Eddmonds*, 143 Ill. 2d at 519)). “ ‘The issue is not mental illness, but whether defendant could understand the proceedings against him and cooperate with counsel in his defense. If so, then, regardless of mental illness, defendant will be deemed fit to stand trial.’ ” *Tuduj*, 2014 IL App (1st) 092536, ¶ 89 (quoting *Easley*, 192 Ill. 2d at 323).

¶ 17 Based on these factors, we conclude that, although defendant exhibited serious mental health issues during his evaluation and at the hearing, the trial court did not abuse its discretion in finding him fit to stand trial. The trial court’s decision was based in part on the testimony of Dr. Barczak, who had evaluated defendant four months before the sentencing hearing. Dr. Barczak testified that her evaluation led her to conclude that, while defendant was obviously mentally ill, he was fit to stand trial. Dr. Barczak acknowledged that defendant reported experiencing tactile, visual, and auditory hallucinations, such as feeling “invisible spiders” on his skin and seeing ghostly figures. He had been provided several medications and had responded well to them, when he chose to take them as prescribed. At the time of the evaluation, defendant

was appropriately groomed, cooperative, polite, friendly, alert, and oriented as to place, person, and his situation. Defendant's memories were intact and his motor skills were normal. Defendant's thought processes were "loose" in that he often shared thoughts that were not meaningfully connected, and he exhibited illogical thinking. However, Dr. Barczak also noted that defendant understood the roles and functions of defense counsel, the prosecutor, the judge, the jury, and the witnesses. He understood appropriate courtroom behavior and said he could monitor his behavior. He understood courtroom terms such as perjury, continuance, and plea bargain. Defendant reported that he trusted his attorney and could assist him in his defense by presenting the true facts of the case. Dr. Barczak concluded that defendant possessed adequate knowledge of the trial process, could relate to his attorney, and could assist in his own defense. Furthermore, defendant's appearances in court before the sentencing hearing were unmarked by unusual behavior and his responses were appropriate to the situations presented. Thus, the record indicates that, up to the point of the sentencing hearing on October 18, 2012, defendant did not exhibit behavior that would create a *bona fide* doubt of his fitness for sentencing.

¶ 18 Defendant argues that he presented a *bona fide* doubt regarding his fitness because he made several illogical statements at the probation revocation hearing, and therefore, the trial court abused its discretion in finding him fit for sentencing. Defendant refers to his statements that there was a huge black bug in the room as well as Terese's testimony that defendant claimed he no longer urinated and could produce alcohol and prescription medication in his stomach. Defendant also notes that he told the court that the Risperidone he was prescribed had prevented him from thinking clearly. However, the evidence that defendant identifies as the most prominent markers of unfitness are the psychotic episodes he suffers when he stops taking his

medication. For instance, Terese testified to several bizarre statements defendant made while off his medication.

¶ 19 In a similar case, our supreme court rejected the argument that a defendant must be found unfit to stand trial if he suffers from a mental disturbance or requires psychological treatment. *Easley*, 192 Ill. 2d at 322-323. Despite defendant's claim that his psychiatric medication made it difficult for him to think, he demonstrated that he understood the nature of the proceedings and the roles of the judge, the prosecutor, and defense counsel. While defendant's illogical statements at the probation revocation hearing show he was suffering from mental illness, they do not prove that he was unfit for sentencing.

¶ 20 Before sentencing defendant, the trial court, recognizing the ongoing fitness issue, asked defendant several questions to make sure he understood the nature of the proceedings. While defendant's appellate counsel quibbles with the propriety of defendant's responses, they are basically accurate from a layman's perspective. Defendant's answers, coupled with the previous evaluation, suggest that the defendant understood the proceedings well enough to be considered fit for sentencing. Furthermore, defendant's trial counsel never indicated that defendant was unable to cooperate in his defense. For these reasons, we conclude that the trial court did not abuse its discretion in declining to *sua sponte* conduct a fitness hearing before sentencing.

¶ 21 B. Fines and Costs

¶ 22 Defendant next challenges (1) the \$200 DNA analysis fee, (2) the \$500 sex offender registration fee, and (3) the \$480 probation services fee. First, the State correctly concedes that the DNA analysis fee should be vacated because defendant has presented a record that he already has paid the fee in another case. See *People v. Marshall*, 242 Ill. 2d 285, 293 (2011). Second, the State also correctly concedes that the sex offender registration fee should be vacated because

defendant's offense was not a statutorily enumerated charge for this fee. See 730 ILCS 150/2(b) (West 2012); 730 ILCS 5/5-9-1.15 (West 2012). Third, the State also correctly concedes that the probation services fee should be reduced from \$480 to \$240 to correspond with the specified rate of \$20 per month and the 12 months that defendant spent on probation. See 730 ILCS 5/5-6-3(i) (West 2012). We vacate the DNA analysis fee and the sex offender registration fee, and we reduce the probation services fee to \$240.

¶ 23

III. CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed in part, modified in part, and vacated in part.

¶ 25 Affirmed in part, modified in part, and vacated in part.