2015 IL App (3d) 140890-U

Order filed October 9, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Whiteside County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0890
v.	)	Circuit No. 10-CF-109
	)	
DANIEL S. POIERIER,	)	Honorable Stanley B. Steines,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice McDade and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea.

¶ 2 Pursuant to an open plea agreement, defendant, Daniel S. Poierier, pled guilty to one count of aggravated driving under the influence (DUI) (625 ILCS 5/11–501(a)(5), (d)(1)(C) (West 2010)) and aggravated fleeing and eluding a peace officer (625 ILCS 5/11–204.1(a)(2) (West 2010)). The trial court sentenced defendant to concurrent terms of 12 and 6 years' imprisonment, respectively. Defendant subsequently moved to withdraw his guilty plea, but the

trial court dismissed his motion on grounds that it was untimely. On direct appeal, we found defendant's motion had been timely and remanded for a hearing on that motion. *People v. Poierier*, 2014 IL App (3d) 120618-U.

¶ 3 Following a hearing on remand, the trial court denied defendant's motion to withdraw his guilty plea. On appeal, defendant argues that the trial court abused its discretion in denying his motion because it had earlier abused its discretion in finding that there was no *bona fide* doubt as to his fitness to stand trial. Defendant also contends that he was provided ineffective assistance of counsel at the hearing on his motion for fitness examination. We affirm.

¶ 4 FACTS

¶ 5 On June 2, 2010, defendant was charged by information with two counts of aggravated DUI (625 ILCS 5/11–501(a)(5), (6), (d)(1)(C) (West 2010)) and two counts of aggravated fleeing and eluding a peace officer (625 ILCS 5/11–204.1(a)(1), (2) (West 2010)). The information alleged that on April 6, 2010, defendant was involved in a motor vehicle accident that resulted in great bodily harm to a victim. Defendant was initially appointed a public defender, but on July 19, 2010, defendant hired attorney Jack Schwartz to represent him. On August 30, 2010, Schwartz filed a motion for an independent fitness examination, asserting that defendant's mental competency was in question. Schwartz noted that defendant had been under psychiatric care for bipolar disorder and depression from August 2009 until two weeks before the accident.

¶ 6 On December 1, 2010, Schwartz was allowed to withdraw because defendant hired Janet Buttron to represent him. On March 8, 2011, Buttron filed a motion for a fitness examination, asserting that defendant was unable to comprehend the proceedings in his case. Counsel noted

defendant's history of psychiatric hospitalizations for mental illness. Counsel also noted that defendant had significant memory, concentration, and neurological problems since the accident.

¶ 7 On March 18, 2011, defendant appeared in court with the intent to enter an open plea. The trial judge—who, prior to that date, had not presided over the case—noted that a motion for mental examination was still outstanding, and questioned Buttron as to whether she had a *bona fide* doubt about defendant's fitness. Buttron explained that defendant was having difficulty understanding some "minor things" and would go off on tangents when she spoke to him. However, she stated that she did not have a *bona fide* doubt as to his fitness. Despite Buttron's assurances, the trial court refused to accept the plea because a different judge was presiding over the case.

¶ 8 On March 28, 2011, the court held a hearing. Defendant testified that he had a history of mental illness. Defendant had been receiving psychiatric treatment since 2000 and was prescribed medications for depression, anxiety, and bipolar disorder. In November 2009, defendant was involuntarily hospitalized due to a suicide attempt where he tried to asphyxiate himself. Defendant was hospitalized 15 years prior for a similar attempt. At the time of the hearing, defendant claimed he was only taking medication for his anxiety. Defendant stated that before the instant accident, he had suffered a head injury that he described as a sickness, not an injury. Defendant also stated that he had no recollection of the night of the accident in question. Defendant acknowledged that he did not completely understand the various motions that his attorney discussed with him. In response to questioning by the State, defendant explained that he understood the court proceedings and the roles of the attorneys and the court. No medical records were introduced into evidence at the hearing.

¶ 9 The trial court found that despite defendant's history of mental health issues, defendant showed that he understood the role of all parties and that his attorney was there to help him, and he understood the charges against him. The court also found that defendant's inability to recall the night of the accident did not affect his fitness to stand trial. The court found no *bona fide* doubt as to defendant's fitness and denied the motion for a fitness examination.

¶ 10 On April 4, 2011, defendant entered into an open plea of guilty to one count of aggravated DUI (625 ILCS 5/11–501(a)(5), (d)(1)(C) (West 2010)) and one count of aggravated fleeing and eluding (625 ILCS 5/11–204.1(a)(2) (West 2010)). In exchange, the State dismissed the remaining two counts.

¶ 11 On April 29, 2011, defendant filed a *pro se* motion, asserting numerous instances of Buttron's ineffective assistance. On May 4, 2011, defendant filed two more *pro se* motions, which sought to withdraw his guilty plea and also alleged Buttron's ineffectiveness. Defendant asserted that he had been suffering from a brain injury, which caused psychosis, dementia, delirium, and amnesia, and thus was unable to participate in his defense. Accordingly, defendant argued that he should be allowed to withdraw his guilty plea because he was not of sound mind at the time he pled guilty and did not understand the proceedings.

¶ 12 Buttron filed a motion to withdraw as defense counsel, which was argued on May 16, 2011. Defendant initially objected to Buttron's motion, but following a recess to converse with Buttron, he no longer objected. The trial court granted Buttron's motion to withdraw. Defendant then requested that he be allowed to proceed *pro se*, but the trial court denied his request. The court explained it's reasoning:

> "Given the nature of the charges, given the defendant's own acknowledgment with regard to not being on prescribed medications with regard

> to depression; his head injuries that are obvious to the Court today; his own statements that at the time of the guilty plea, which was just back on April 4th of this year, just a month and a half ago, if even that, that he is saying he was not of sound mind and did not understand what was happening, I can't find in good conscience that [defendant] is able to adequately represent himself. I will not grant his waiver of an attorney."

Having denied defendant's request to proceed *pro se*, the court appointed a public defender to represent defendant at sentencing.

¶ 13 The court sentenced defendant to concurrent terms of 12 and 6 years' imprisonment. At sentencing, defendant—as described in defendant's brief—"made a lengthy and disjointed unsworn statement, replete with circular logic and recurring themes." In his statement, defendant insisted he did not understand the proceedings because of his prior brain injury. He described a prior suicide attempt and how it led to both the accident and his inability to recall the accident. The court also received evidence in the form of defendant's medical records. The records showed that defendant's cognitive function was impaired, and that he continued to have trouble recalling the events of the accident. The presentence investigation report similarly reported that defendant suffered from memory loss. None of the medical documentation directly addressed defendant's fitness to stand trial.

¶ 14 On August 9, 2011, defense counsel filed a motion to reconsider sentence. On September 18, 2011, the court received an *ex parte* letter from defendant, requesting a court date for his previously filed motion to withdraw guilty plea. On October 23, 2011, the court received another *ex parte* letter from defendant, which included a copy of defendant's previously filed *pro se* motion to withdraw guilty plea and motion for ineffective assistance of counsel. In the letter,

defendant stated that he mailed a motion to withdraw guilty plea on August 30, 2011, from Stateville Correctional Center, and attached proof of service and a notarized affidavit from the same date. Defendant explained that he was not of sound mind when he pled guilty because he suffered from carbon monoxide poisoning resulting from his suicide attempt in 2009, which caused brain damage. Defendant also claimed that because he was taking psychotropic medication and a narcotic, he did not recall his sentencing hearing.

¶ 15 On February 14, 2012, defense counsel filed a motion to withdraw defendant's guilty plea and adopted defendant's *pro se* motion filed October 23, 2011. On June 26, 2012, counsel filed an amended motion to withdraw defendant's guilty plea and an amended motion to reconsider sentence in order to incorporate additional *pro se* filings from defendant.

¶ 16 The court held a hearing on both of defendant's amended motions on July 18, 2012. The State objected to defendant's motion to withdraw guilty plea, claiming it was untimely. Defense counsel argued that defendant mailed his *pro se* motion within 30 days of sentencing, but when it was not received by the court he resubmitted it on October 23, 2011. The court found defendant's motion to withdraw his guilty plea untimely. Additionally, following defendant's testimony, the court denied his motion to reconsider sentence.

¶ 17 On direct appeal, we held that the trial court did not abuse its discretion in denying defendant's request to proceed *pro se*, finding that defendant's request was not clear and unequivocal where he "only had a conditional willingness to proceed *pro se*." *Poierier*, 2014 IL App (3d) 120618-U, ¶ 25. However, we found that defendant's motion to withdraw his guilty plea had been timely filed, and remanded the matter for a hearing on that motion.

¶ 18 On remand, the public defender withdrew as counsel, and private attorney Nate Nieman entered an appearance. Defendant filed an amended motion to withdraw guilty plea and a

motion for appointment of a medical expert. The court heard and denied defendant's motion for appointment of a medical expert.

¶ 19 Defendant's motion to withdraw guilty plea was heard on October 28, 2014. Defendant's first witness was Buttron, who testified that she met with defendant in person on numerous occasions and had numerous conversations with him over the telephone. She testified that defendant "presented very well" and was "very clear, very concise." Buttron and defendant discussed the elements of the offense, possible defenses, and legal issues; defendant even did independent research. Buttron did, however, recall a specific instance in which defendant "became extremely agitated and extremely upset," noting that "he started making comments like I don't understand, I don't know what is going on, I don't know what is happening *** and he wouldn't—but it was only at the times that we were discussing that particular statute." Buttron reviewed the medical documentation referenced in defendant's motion for fitness examination, but did not recall that documentation containing information about a brain injury.

¶ 20 In reference to defendant's fitness hearing, Buttron testified that she did not recall presenting any of the medical documentation in her possession. She did extensive investigation into defendant's mental health issues, including review of his medical records and research on carbon monoxide poisoning. Buttron recalled that the medical records indicated defendant had suffered "confusion problems" after the accident.

¶ 21 On cross-examination, Buttron testified that defendant had submitted well-argued research to her. During a discussion of the defense of voluntary intoxication, defendant became agitated, "and that is when he would say, I don't understand, I don't understand." Buttron did not feel that there was an issue with regard to defendant's ability to plead guilty.

¶ 22 Defendant testified on his own behalf. Defendant's testimony was substantially similar to that given at the hearing on defendant's motion for fitness examination and his unsworn statement at sentencing. He explained that he suffered carbon monoxide poisoning as the result of an earlier suicide attempt, and that this impacted his ability to recall past events. He testified, again, that he was unable to remember the night of the offense. The trial court denied defendant's motion to withdraw his guilty plea.

¶ 23 ANALYSIS

¶ 24 On appeal, defendant argues that the trial court abused its discretion in denying his motion to withdraw guilty plea. Initially, defendant contends the trial court abused its discretion in holding there was no *bona fide* doubt as to his fitness. Because defendant believes a *bona fide* doubt as to fitness did exist, the trial court should have allowed him to withdraw his guilty plea.

¶ 25 Alternatively, defendant argues that the trial court, after the *bona fide* doubt hearing, made a *de facto* finding of a *bona fide* doubt as to defendant's fitness. Defendant maintains that the court's failure to follow the *de facto* finding with a full fitness hearing rendered his subsequent guilty plea unknowing and involuntary. Defendant therefore concludes that because the plea was unknowing and involuntary, the trial court abused its discretion in denying his motion to withdraw that plea.

¶ 26 Finally, defendant argues that he received ineffective assistance of counsel prior to his guilty plea. Specifically, defendant contends that Buttron was ineffective for failing to introduce his medical records at his *bona fide* doubt hearing. Defendant believes the denial of his motion to withdraw guilty plea was improper in light of this alleged ineffective assistance.

¶ 27 We reject each of defendant's contentions and affirm the trial court's ruling denying defendant's motion to withdraw guilty plea.

¶ 28 I. Actual *Bona Fide* Doubt

¶ 29 Leave to withdraw a guilty plea is not granted as a matter of right, but as required to correct a manifest injustice. *People v. Pullen*, 192 Ill. 2d 36, 39 (2000). Whether to allow a defendant to withdraw his guilty plea is left to the discretion of the trial court. Thus, the trial court's decision denying defendant's motion to withdraw his guilty plea is reviewed only for an abuse of discretion. See *People v. Hillenbrand*, 121 Ill. 2d 537, 545 (1988). A trial court abuses its discretion only where its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court. *People v. Smith*, 406 Ill. App. 3d 747 (2010).

¶ 30 Defendant contends the trial court abused its discretion in denying his motion to withdraw his guilty plea because it had previously erred in finding that there was no *bona fide* doubt as to his fitness to stand trial. "The decision whether to order a fitness examination is expressly left to the discretion of the trial court because it is in a superior position to observe and evaluate the defendant's conduct." *People v. Haynes*, 174 Ill. 2d 204, 253 (1996). Accordingly, a reviewing court will only reverse that decision if the trial court has abused its discretion. *People v. Weeks*, 393 Ill. App. 3d 1004, 1009 (2009).

¶ 31 The due process clause of the fourteenth amendment prohibits the prosecution of a defendant who is not fit to stand trial. *Haynes*, 174 Ill. 2d at 226; U.S. Const., amend. XIV. In Illinois, a defendant is presumed fit to stand trial. 725 ILCS 5/104-10 (West 2010). "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." *Id.* "When a bona fide doubt of the defendant's fitness is raised, the court shall order a determination of the issue before proceeding further." 725 ILCS 5/104-11(a) (West 2010). Once the trial court concludes

that a *bona fide* doubt exists concerning the defendant's fitness, the defendant becomes constitutionally entitled to a fitness hearing. *People v. Smith*, 353 Ill. App. 3d 236, 240 (2004).

¶ 32 In determining whether a *bona fide* doubt of fitness exists, a trial court may consider a number of relevant factors, including "a defendant's irrational behavior, the defendant's demeanor at trial, and any prior medical opinion on the defendant's competence to stand trial." *People v. Easley*, 192 Ill. 2d 307, 319 (2000). "[T]here 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.' " *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991) (quoting *Drope v. Missouri*, 420 U.S. 162, 180 (1975)).

¶ 33 In the present case, the trial court found there was no *bona fide* doubt as to defendant's fitness to stand trial. This ruling was based upon defendant's stated understanding of the court system, the roles played by the attorneys and the judge, and the charges against him. Defendant's own attorney had also informed the court days earlier that she herself had no doubt as to defendant's fitness. The court acknowledged defendant's history of mental illness, as well as his inability to recall events from the night of the accident, but explicitly found that those issues did not undermine defendant's fitness to stand trial. The court's well-reasoned finding was far from arbitrary or fanciful. Accordingly, it was not an abuse of discretion.

¶ 34 Defendant stresses that his inability to recall any details related to his offense left him unfit to stand trial, and thus rendered the trial court's *bona fide* doubt ruling erroneous. A defendant's amnesia as to the events surrounding the crime, however, does not *per se* render the defendant unfit. *People v. Stahl*, 2014 IL 115804, ¶ 39. Instead, a court should consider that amnesia as one among the totality of circumstances. *Id*. The record here demonstrates that the

trial court considered defendant's inability to remember events related to the offense, but explicitly found that it would not affect his fitness to stand trial. Defendant's contention on appeal is no more than an invitation for this court to reweigh the evidence and substitute its own opinion for that of the trial court. We decline that invitation.

¶ 35 II. *De Facto* Finding of *Bona Fide* Doubt

¶ 36 Defendant maintains that the trial court—after having found on March 28, 2011, that there was no *bona fide* doubt as to his fitness—twice made a *de facto* determination of a *bona fide* doubt as to his fitness. Because the trial court failed to hold a full fitness hearing following these determinations, defendant believes, his guilty plea was rendered unknowing and involuntary. In turn, defendant argues the trial court abused its discretion in denying his motion to withdraw his guilty plea.

¶ 37 The trial court has a continuing duty to order a fitness hearing, *sua sponte*, any time a *bona fide* doubt arises regarding a defendant's fitness to stand trial. *People v. Sandham*, 174 Ill. 2d 379, 382 (1996). The issue of a defendant's fitness can be raised at any time, even after a *bona fide* doubt of defendant's fitness has already been raised and not found. *People v. Walker*, 262 Ill. App. 3d 796, 802 (1994); see also 725 ILCS 5/104-11(a) (West 2010). Once the trial court concludes that a *bona fide* doubt exists concerning the defendant's fitness, the defendant becomes constitutionally entitled to a fitness hearing. *Smith*, 353 Ill. App. 3d at 240.

¶ 38 Defendant contends that the trial court's first *de facto* finding of a *bona fide* doubt occurred on May 16, 2011, at the hearing on Buttron's motion to withdraw. At that hearing, the court denied defendant's request to proceed *pro se*, citing the mental infirmities under which he was laboring. Defendant maintains that the trial court erred in not inquiring further into his fitness or ordering a fitness examination. However, it is well-settled that a defendant may be

competent to stand trial while not competent to represent himself in that trial. *Indiana v. Edwards*, 554 U.S. 164, 178 (2008) ("[T]he Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under [*People v. Dusky*, 362 U.S. 402 (1960)] but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves."). Accordingly, the trial court's concerns regarding defendant's inability to represent himself did not necessarily implicate a concern regarding his fitness for trial. The court's finding did not constitute a *de facto* finding of a *bona fide* doubt regarding defendant's fitness.

¶ 39 Similarly, defendant contends that a *bona fide* doubt was again raised on August 3, 2011, at his sentencing hearing. Though defendant claims the trial court made a "*de facto* determination of a bona fide doubt," he does not point to any actual findings or comments by the trial court at sentencing that would support such an assertion. It appears that defendant's *actual* argument is that, based on the evidence adduced at sentencing, the trial court should have *sua sponte* found a *bona fide* doubt as to his fitness. We reject this argument.

¶ 40 The evidence presented at sentencing, including defendant's unsworn statement to the court, was largely similar to the evidence the court had already heard and considered at defendant's *bona fide* doubt hearing. Defendant made an unsworn statement in which he detailed his memory loss and his inability to recall the offense. He also stated that he did not understand the proceedings. Also introduced at sentencing were a number of medical records that described defendant's decreased cognitive functioning and memory loss. As discussed above, however, defendant had already testified regarding his memory loss at the *bona fide* doubt hearing. The trial court fully considered defendant's memory loss; it did not doubt defendant's assertions, such that his credibility needed to be bolstered by the medical records. The court reasonably

concluded that defendant's memory loss did not render him unfit to stand trial. The evidence later presented at sentencing was merely repetitive and cumulative of that which was presented months earlier at the *bona fide* doubt hearing. That neither defendant's statements nor his medical records swayed the court from its original position does not constitute an abuse of discretion.

¶ 41 Curiously, defendant claims the present case is analogous to *Sandham*, in which the reviewing court found "there is no question that the trial judge had no discretion and was required to conduct, *sua sponte*, a fitness hearing at the point he *questioned defendant's capacity to comprehend what was transpiring the sentencing hearing*." (Emphasis added by defendant.) *Sandham*, 174 Ill. 2d at 388-89. At no point during sentencing did the trial court question defendant's fitness; defendant merely argues that the court should have done so. Accordingly, *Sandham* is inapplicable. The trial court in the present case made no *de facto* findings of a *bona fide* doubt regarding defendant's fitness.

¶ 42 III. Ineffective Assistance of Counsel

¶ 43 We review claims of ineffective assistance of counsel under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984); see *People v. Manning*, 241 Ill. 2d 319, 326 (2011). To establish ineffective assistance of counsel, a defendant must show: (1) counsel's performance fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687-96. The Supreme Court defined a "reasonable probability" as "a probability sufficient to undermine confidence in the outcome." *Id*. at 694. When an ineffective assistance of counsel claim is more easily disposed of on the grounds of lack of sufficient prejudice, the court should do so. *Id.* at 697.

¶ 44 Defendant argues that Buttron's assistance fell below an objective standard of reasonableness when, at defendant's *bona fide* doubt hearing, she failed to introduce defendant's medical records into evidence. Defendant then asserts that but for counsel's errors—that is, had defendant's medical records been introduced at the *bona fide* doubt hearing—there is a reasonable probability that the result of that hearing would have been different.[1] We disagree.

¶ 45 Even assuming, *arguendo*, that Buttron erred in not introducing the medical records, we find that defendant was not prejudiced by this decision. It is improbable that the medical records, which were cumulative of defendant's testimony, would alter the trial court's decision regarding a *bona fide* doubt as to defendant's fitness. The trial court gave no indication that it doubted defendant's testimony regarding his memory loss. The court simply concluded that the memory loss alone would not render defendant unfit, and did not trigger a *bona fide* doubt. Further, the medical records did not contain any medical opinions regarding defendant's fitness to stand trial. See *Easley*, 192 Ill. 2d at 319 (in making *bona fide* doubt determination, court may consider "any prior medical opinion on the defendant's competence to stand trial.").[2]

¶ 46 CONCLUSION

¶ 47 The judgment of the circuit court of Whiteside County is affirmed.

¶ 48 Affirmed

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[1] In a continuing chain of causation, defendant contends that, because of the ineffective assistance of counsel, his guilty plea was rendered unknowing and involuntary. Thus, defendant concludes, the trial court abused its discretion in denying his motion to withdraw the plea.

[2] Because defendant's medical records were introduced at his sentencing hearing, they appear in the record on this appeal. We note that the medical records did not cause the trial court to find a *bona fide* doubt as to defendant's fitness at sentencing.