

No. 1-12-3265

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 3163
	)	
MALVIN WASHINGTON,	)	Honorable
	)	Carol A. Kipperman,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Justices Neville and Liu concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Where there was no *bona fide* doubt as to defendant's fitness to stand trial, the trial court did not abuse its discretion in denying defendant's request for a fitness examination.

¶ 2 Defendant, Malvin Washington, entered a negotiated guilty plea to one count of attempted armed robbery, and was sentenced to 20 years' imprisonment. He later filed a *pro se* motion to withdraw his plea, and requested a psychiatric examination. The court denied his request, and he now appeals that decision.

¶ 3 The record shows that, while in custody awaiting trial for a murder charge which is not the subject of this appeal, defendant was charged with attempted armed robbery, attempted robbery, and aggravated battery in connection with a February 2006 incident during which defendant entered an Aamco Transmission shop, held a knife to the shop manager's throat, and demanded money.

¶ 4 On March 10, 2010, defendant informed the court that he wished to dismiss his public defender and represent himself *pro se*. The case was continued, and defendant was found guilty of murder and sentenced to natural life imprisonment in the other proceeding. Thereafter, during a court date on July 25, 2011, defendant repeated his request to represent himself. The court informed defendant of the charges against him and that he faced a Class X sentence of up to 30 years imprisonment because of his criminal background. The court asked defendant if he understood the charges filed against him and the possible penalties, and he responded affirmatively.

¶ 5 Defendant also indicated that he understood that he was entitled to be represented by an attorney, that he would be provided an attorney if he could not afford one, and that his attorney would assist him in preparing for trial and presenting a defense to the judge or jury. Defendant stated, "And for the record, me and the counselor went over this." The court further explained, *inter alia*, that counsel would help prepare his case, object to improper evidence, inform the court of relevant case law, make discovery requests, and cross-examine the State's witnesses. Counsel would also advise defendant as to what pleas to enter, which jurors to accept or reject, and whether to testify. The court then asked defendant if he understood, and defendant again replied in the affirmative. Defendant explained to the court that he had asked counsel to file

motions for him, but counsel disagreed with his strategy and refused. Defendant stated that he wished to represent himself to attack the indictment and the evidence against him.

¶ 6 The court admonished defendant that if he gave up his right to an attorney, the court would not appoint standby counsel and he would be "entirely on [his] own[.]" Defendant indicated that he understood, and still wished to represent himself. When the court asked defendant if he was under the influence of any drugs or alcohol, he responded, "No, ma'am." Defendant stated that he was not currently taking any prescription medication, but that he had received treatment approximately 20 years ago for a suicide attempt. The court asked counsel if defendant "was ever BCX [Behavioral Clinical Examination]" and counsel responded, "No. I've never had that issue with him." The court then asked if any party had a *bona fide* doubt as to defendant's mental fitness to stand trial, and both counsel and the State responded that they did not. Counsel elaborated, "Not at all. I think he's fit. And at least my interactions with him, I've represented him for some time now, and he's always been lucid. I'm able to communicate with him even though we've disagreed on things."

¶ 7 At that point, the court asked defendant if he understood that if he were allowed to proceed *pro se*, he would be held to the same standards as an attorney, he would receive no special consideration, and the court would not "conduct a law school class [or] conduct [a] defense" for him. Defendant stated that he understood, and reiterated his desire to represent himself.

¶ 8 The court found that defendant had been advised of his right to counsel, that he understood that right and the consequences of his decision, and that he voluntarily, and without coercion, was waiving his right to counsel. The court then excused counsel, and allowed defendant to proceed *pro se*.

¶ 9 On September 22, 2011, defendant filed a motion to dismiss the indictment, and a motion to quash his arrest and suppress evidence. Before the court ruled on those motions, the State extended an offer to defendant in open court on January 6, 2012, where, in exchange for his guilty plea to one count of attempted armed robbery, he would be sentenced to 20 years' imprisonment. Defendant stated, "I will accept, your Honor." Defendant informed the court of a conviction from 1993, and stipulated to additional convictions and to his sentencing as a Class X offender. Defendant signed a jury waiver and pre-sentence investigation waiver, and stipulated to the facts of the case. The court accepted defendant's plea of guilty, and sentenced him to 20 years' imprisonment, to run concurrently with the natural life sentence imposed on his murder conviction. The court then admonished defendant of his appellate rights, and he indicated his understanding of them.

¶ 10 Two weeks later, defendant filed a *pro se* motion to withdraw his plea and vacate his sentence, which he amended on January 31, 2012. He claimed that he was not mentally competent to enter the plea, and that he was not "alert to person, place and time[.]" He further asserted that he was not examined for fitness after he was unable to cooperate with counsel, or after he was found guilty of murder in the other proceeding. In support, defendant attached an affidavit in which he claimed to have been suffering symptoms of schizophrenia, paranoia and suicidal ideation on the day of his plea. He also attached, *inter alia*, the first page of a "psychiatric summary" referencing a number of other psychiatric and psychological summaries and reports, two of which had labeled him "unfit" or "not competent to stand trial[.]"

¶ 11 On March 6, 2012, the court appointed counsel to assist defendant with his motion. Five months later, counsel informed the court that defendant had received a BCX in 2008 in connection with the murder case, but that defendant's former counsel who had represented him

until defendant was permitted to represent himself, was not aware of that BCX or that defendant had a prior medical condition. Counsel requested a new psychiatric examination to determine whether defendant was having schizophrenic symptoms at the time of his plea. The State objected, and the court denied defendant's request.

¶ 12 On October 25, 2012, the court held a hearing on defendant's motion to vacate his guilty plea. Defendant testified that he did not remember any specifics on the day of his plea, and that he was not aware of "persons," where he was in general, or the time of day. He asserted that he "hear[s] voices" and that someone was "chasing after" and "trying to kill" him. He claimed to hear those voices on a regular basis, and, on the day that he pleaded guilty, they interfered with his understanding of "person, place and time[.]"

¶ 13 On cross-examination, defendant claimed that he did not remember entering a guilty plea, engaging in plea negotiations, or meeting with an assistant State's Attorney on the day of his plea. He also did not remember choosing to represent himself, and claimed that he did not look at the *pro se* amended motion to withdraw his plea and that "somebody" prepared it for him. He did not remember if he participated in the preparation and filing of the motion, and when asked how he knew that the motion was "true" if he could not remember preparing it, defendant stated "because I know it's true." Defendant recalled preparing the attached affidavit, but did not remember when he did so. He stated that he was having schizophrenic and paranoid thoughts that someone was "trying to kill" him, "all day" on the day of his plea. He told "some guy" in court that he was having suicidal thoughts, but defendant did not know the identity of that person. On redirect, defendant testified that he did not receive treatment for his medical condition in prison because he was "afraid to go there" and "they're trying to kill" him.

¶ 14 The court denied defendant's motion, finding that the testimony was "not believable" and that defendant was playing "some sort of game[.]" It noted that when defendant pleaded guilty, he was carefully questioned, his conduct was appropriate, and there was nothing to indicate that he was taking or under the influence of any drug or medication.

¶ 15 Defendant now appeals that ruling, arguing that the court abused its discretion by denying his request for a fitness examination. The State responds that, where there was no *bona fide* doubt of defendant's fitness, the court properly denied defendant's request for an examination.

¶ 16 Due process bars the prosecution of an unfit defendant. *People v. Brown*, 236 Ill. 2d 175, 186 (2010). Section 104-10 of the Code of Criminal Procedure of 1963 (Code), provides that defendant is unfit to stand trial 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 2010). The issue of a defendant's fitness to stand trial may be raised by the defense, State, or court, and the trial court must order a fitness hearing if it concludes that a *bona fide* doubt of defendant's fitness is raised. 725 ILCS 5/104-11(a) (West 2010). If defendant so requests, "the court, in its discretion, may order an appropriate examination" to determine whether there is a *bona fide* doubt as to his fitness to stand trial. 725 ILCS 5/104-11(b) (West 2010). Relevant factors which a trial court may consider in assessing whether a *bona fide* doubt of fitness exists include defendant's behavior, demeanor at trial, any prior medical opinion on the defendant's competence, and any representations by defense counsel on the defendant's competence. *Brown*, 236 Ill. 2d at 186-87.

¶ 17 Whether a *bona fide* doubt as to defendant's fitness exists is a matter within the discretion of the trial court, which is in the best position to observe defendant and evaluate his conduct. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 53. A trial court abuses its discretion in this

matter, only where no reasonable person would take the view adopted by the court or where its ruling is arbitrary, fanciful, or unreasonable. *Tolefree*, 2011 IL App (1st) 100689, ¶ 53.

¶ 18 In this appeal, defendant does not challenge the court's failure to conduct a fitness hearing, but instead claims that the court abused its discretion in failing to order a fitness examination to aid in its determination of whether to grant a fitness hearing. This distinction is not well-taken. In *People v. Hanson*, the supreme court held that a fitness hearing is mandatory only if the trial court finds a *bona fide* doubt of a defendant's fitness to stand trial. *People v. Hanson*, 212 Ill. 2d 212, 217 (2004). The supreme court also noted that before holding such a hearing, the trial court *may, in its discretion*, order a fitness examination to aid in its decision whether the defendant is fit for trial. *Hanson*, 212 Ill. 2d at 217 ("If the trial court is not convinced *bona fide* doubt is raised, it has the discretion under section 104-11(b) to grant the defendant's request for appointment of an expert to aid in that determination"). It therefore follows that if the court determines there is no *bona fide* doubt as to defendant's fitness, it is not required to order such an examination.

¶ 19 After reviewing the relevant factors, we conclude that the court did not abuse its discretion by failing to order a fitness examination in this case. The trial court had the opportunity to observe defendant's conduct and demeanor during the proceedings, and it expressed no concerns about his ability to understand the nature of those proceedings. Defendant's counsel and the State also expressed no concerns when defendant moved to represent himself, and counsel affirmatively indicated that he thought defendant was "fit[.]" Counsel explained that he had represented defendant "for some time[.]" and always found him to be "lucid" and able to communicate.

¶ 20 The record also reveals that throughout the proceedings, defendant's interactions with the court were rational and appropriate. Defendant indicated that he understood the court's admonishments, both when waiving his right to counsel, and when entering his guilty plea. His behavior, as reflected in the record, indicated his rational and factual understanding of the proceedings (*People v. Weeks*, 393 Ill. App. 3d 1004, 1009 (2009)), as he, *inter alia*, requested and received a court order to allow access to the law library; filed motions for discovery, to dismiss, and to quash arrest and suppress evidence; and made appropriate stipulations during the plea hearing.

¶ 21 Moreover, even if defendant was experiencing schizophrenic symptoms on the day of his plea, as he now alleges, such symptoms are not sufficient to create *bona fide* doubt as to his fitness. *People v. Eddmonds*, 143 Ill. 2d 501, 519 (1991). Fitness refers only to defendant's ability to function within the context of a trial and not to his sanity or competence in other areas. *People v. Easley*, 192 Ill. 2d 307, 320 (2000). "A defendant can be fit for trial although his or her mind may be otherwise unsound." *Easley*, 192 Ill. 2d at 320. Even if defendant suffers from mental disturbances or requires psychiatric treatment, if he understands the proceedings against him and can cooperate in his defense, he will be deemed fit to stand trial. *Easley*, 192 Ill. 2d at 322-23. Here, we find nothing in the record to suggest that defendant was unable to understand the nature and purpose of the proceedings against him or to assist in his defense. In fact, the record is replete with indications of his lucidity and purposeful conduct.

¶ 22 Accordingly, we conclude that defendant's interactions with the court before his plea did not raise a *bona fide* doubt as to his fitness, and that the trial court did not abuse its discretion when it denied defendant's request for a fitness examination.

¶ 23 Affirmed.