

2014 IL App (1st) 113585-U

No. 1-11-3585

September 30, 2014

SECOND DIVISION

**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 DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS, )	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee, )	
)	
v. )	No. 06 CR 19060
)	
JAMES McDURMON, )	
)	The Honorable
Defendant-Appellant. )	Timothy Chambers,
)	Judge presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Simon and Justice Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the defendant stopped making the delusional assertions that supported the initial evaluation of him as unfit to stand trial, and an expert found the defendant fit, the trial court's finding that the defendant had become fit to stand trial was not against the manifest weight of the evidence. When a defendant with a history of a delusional disorder that rendered him unfit for trial made several patently untrue assertions after the trial, the trial court had a duty to order, *sua sponte*, a hearing to determine the defendant's fitness for sentencing.

¶ 2 After prosecutors charged James McDurmon with murdering his brother, James spoke to several psychiatrists who found that James's delusions made him unfit to stand trial. In 2010, James stopped making delusional assertions, and the trial court found him fit to stand trial. A jury found James guilty of first degree murder. Before sentencing, at a hearing in court, James made numerous false assertions about what had happened in court before and during the trial. The court sentenced James without holding a hearing on his fitness for sentencing.

¶ 3 In this appeal, we hold that the trial court's finding of fitness for trial is not contrary to the manifest weight of the evidence. However, we find that because James's delusional assertions after the trial raised a *bona fide* doubt of his fitness, the trial court had a duty to hold a hearing *sua sponte* on James's fitness for sentencing. Accordingly, we remand for a retrospective fitness hearing.

¶ 4 **BACKGROUND**

¶ 5 Around 6 p.m. on August 1, 2006, James flagged down Officer Joseph Viggiano of the Lincolnwood Police Department as Viggiano drove through Lincolnwood on a routine patrol. James spoke somewhat incoherently at first, but once he slowed down his speech, James said to Viggiano, "My brother's been causing me some grief, so I shot him twice, and he's probably dead." Viggiano and James went to the home of James's mother, Peggy McDurmon, where Viggiano found James's brother, Lester McDurmon, lying on the floor, dead from two bullet wounds to the head. Police arrested James on a charge of murder.

¶ 6 **Fitness Hearings**

¶ 7 In 2007, Dr. Andrew Kulik, a psychiatrist, found James unfit for trial because he suffered from "severe delusions related to the offense." Dr. Peter Lourgos interviewed James in

January 2008, and found that his "delusions preclude him from effectively assisting counsel," even though James understood the charges and trial procedures. The trial court found James unfit to stand trial and remanded him to the Department of Human Services for treatment.

¶ 8 Dr. Kulik revised his assessment in April 2008, finding James fit for trial. But James refused to take prescribed antipsychotic medications, and Dr. Lourgos found James unfit for trial in 2009. The trial court again found James unfit to stand trial. In January 2010, Dr. Romulo Nazareno found Jones unfit due to his paranoid delusions. Like other psychiatrists who interviewed James, Dr. Nazareno diagnosed James as suffering from a delusional disorder and found that James had "a very good understanding of basic court terms and procedures."

¶ 9 In April 2010, Dr. Farzana Husain, who began treating James in February 2010, reported that James "will not engage in any type of evaluation because he distrusts the evaluation process." Because James understood the legal proceedings, and he "did not express any delusional material during th[e] interview" with Dr. Husain, Dr. Husain found James fit to stand trial without the antipsychotic medication his treatment team recommended. Dr. Husain later added a finding that James was malingering. Dr. Lourgos tried to interview James to determine his fitness, but because James refused to respond to any questions, Dr. Lourgos could reach no conclusions on the issue.

¶ 10 At the fitness hearing held on November 5, 2010, Carol Borsinger, a forensic social worker who tried to help the State get James to trial, testified that James appeared to "be educating people \*\*\* regarding how they should proceed with their legal case[s]." After speaking with James, several patients "return[ed] back to the hospital based on not speaking

to evaluators," and in that way they delayed their trials. Dr. Husain testified that James denied that he suffered any delusions. He had also stopped repeating the delusional assertions that led to the initial evaluation of him as unfit. Dr. Husain explained that she based the finding that James was malingering on his unwillingness to take prescribed antipsychotic medications and his unwillingness to cooperate with other treatment recommendations. Dr. Husain diagnosed James as bipolar, not delusional.

¶ 11 Dr. Robert Hanlon testified that he examined James in December 2008. He reviewed reports of several tests designed to detect malingering, and none of the tests showed any evidence that James was malingering. Dr. Hanlon found in all reports of all the doctors who examined James no evidence to support a diagnosis of him as bipolar.

¶ 12 The court found that because James no longer made delusional assertions, he had recovered from his delusional disorder. The court held James fit to stand trial.

¶ 13 Trial

¶ 14 At the jury trial, held in September 2011, defense counsel relied on the insanity defense. Peggy testified that in June and July of 2006, James on occasion demanded that Lester and Peggy return his money. He claimed that he had won a million dollars playing the lottery, and he had asked Lester and Peggy to keep the money for him. Later in July, he claimed that he had given them \$80,000,000. Peggy said that James had some history of delusions, as he had at times over many years told Peggy that many people tried to kill him. Peggy had wanted to help James with his "imagination," but she could not persuade him to see a doctor.

¶ 15 Dr. Hanlon testified that James suffered from delusions that made him unfit to stand trial. Because of the delusions and the lack of help from James, Dr. Hanlon could not form any

opinion on whether James was legally sane at the time of the offense. Christofer Cooper, a psychologist, testified for the State that James suffered from delusions. All the tests Cooper ran showed no evidence of malingering, but Cooper believed that all of the tests might be wrong, and James might be malingering. Cooper found that, despite the delusions, James was legally sane when he killed Lester.

¶ 16 The jury found James guilty of first degree murder. After defense counsel filed a motion for a new trial, James sought leave to represent himself. James told the court he did not trust his attorney, because his attorney "got knocked down by the police \*\*\*. He said that in one court, it happened; he says in the next court, it didn't." The trial court responded, "I have no idea what that means." Without any further inquiry, the court warned James that the court would hold him to the same standards it applied to attorneys, and asked James if he still wanted to represent himself. James said, "Yes, sir." The court permitted defense counsel to withdraw.

¶ 17 At the outset of the hearing on the motion for a new trial, the court reminded James of the severity of the charge and the range of possible sentences. When James said he understood and wished to represent himself, the trial court allowed James to proceed *pro se*. James represented himself in all proceedings on his motion for new trial and for sentencing.

¶ 18 In his argument for a new trial, James said that his attorney "failed to impeach police officer after prosecutor told him he was being investigated for gang and mob activities." James added that someone in court told him Lester "was shot somewhere in the midsection," not in the head. James said that he and his attorney "expressed [their] respective desires to

conclude [their] client/attorney relationship before the Court," but the court "forced [them] to proceed" as attorney and client. This colloquy followed:

"[James:] It was brought to the attention of the Court that the attorney sought financial compensation from the widow of the victim in the instant case –

THE COURT: I would like to state right now at no point in time was it brought to my attention that [defense counsel] was seeking money from Lester McDurmon's wife.

[James]: She said it in this courtroom and I said it many times.

THE COURT [addressing the prosecutor]: Miss Crowley, are you aware of this? This was your witness. \*\*\*

MS. CROWLEY: Judge, no.

\* \* \*

\*\*\* I spoke to [defense counsel] to see if they had sought any monetary compensation from Lester McDurmon's widow.

They denied it. They're prepared to testify \*\*\*.

\* \* \*

[James]: Cheryl McDurmon [Lester's widow] sat over there \*\*\* and stood up and said that [defense counsel] had sent somebody down and asked for money in this case.

THE COURT: That never happened in this courtroom.

\* \* \*

\*\*\* She clearly did not say anything like that in court.

\* \* \*

[James:] The defendant's right to fire his attorney because of trust issues and to represent itself is his constitutional right. In your court I tried to fire him many times.

\* \* \*

It says I can fire him and you wouldn't let me.

THE COURT: That's not my recollection of the facts, Mr. McDurmon.

\* \* \*

[James:] I had this guy [defense counsel] stand behind me doing this in several courts, I mean, and telling people I'm nuts in any statement I made.

THE COURT: I am not aware of that happening.

[James:] Again I need the transcript for that.

\* \* \*

You know, in the pretrial my attorney tried to plead me guilty without my knowledge several times.

THE COURT: I am not aware of that at all.

\* \* \*

[James:] The attorney also neglected to challenge the alleged confession presented as evidence of my guilt. I repeatedly told the attorney that I made no such confession, and I also informed him that I was assaulted at the

Lincolnwood Police Station on the night of my arrest. I was drugged and I was forced to sign papers against my will.

\* \* \*

\*\*\* [H]e tried to plead me guilty in some of the proceedings and I had to stand up in court and yell that I was not. This happened several times.

\* \* \*

\*\*\* You yourself even threatened him with perjury.

THE COURT: I never threatened someone with perjury or allegations of that.

[James:] Again, I need the transcripts.

My attorney said in one count he found the money I gave my brother."

¶ 19 When the trial court denied the motion for a new trial, the court said that James "presented here today things that simply did not happen." With no further inquiry, the trial court proceeded to sentencing. At the sentencing hearing, James said only:

"I'm not guilty of this charge, okay. That's pretty much all I want to say.

My brother was no saint. I'm not exactly sure what happened. I've said that in the beginning.

But, anyway, here I've got my notice of appeal."

¶ 20 Despite James's mental illness and his lack of any prior record, the court found "nothing to say on [James's] behalf." The court sentenced James to 35 years for murder plus 25 years for personal discharge of a firearm, for a total of 60 years in prison. James now appeals.

¶ 21

## ANALYSIS

¶ 22

On appeal, James contends that the trial court erred by (1) finding him fit to stand trial, (2) failing to hold a new fitness hearing before sentencing, and (3) sentencing him to 60 years in prison despite his mental illness and lack of criminal history. Distinct standards of review govern the distinct issues.

¶ 23

### Fitness to Stand Trial

¶ 24

When the trial court has heard evidence regarding a defendant's fitness to stand trial, the appellate court should reverse the trial court's finding only if it is contrary to the manifest weight of the evidence. *People v. Jamison*, 197 Ill. 2d 135, 153 (2001). In assessing fitness, the trial court should consider the defendant's ability to understand the charges, the legal proceedings, and the possible consequences of the trial. 725 ILCS 5/104-16(b) (West 2010). The trial court should also consider the defendant's "ability to observe, recollect and relate occurrences, especially those concerning the incidents alleged, and to communicate with counsel." 725 ILCS 5/104-16(b) (West 2010); see *People v. Stahl*, 2014 IL 115804, ¶ 35.

¶ 25

Both of the doctors who testified at the fitness hearing agreed that James always showed a strong understanding of the charges, the legal proceedings, and the possible consequences of the trial. Dr. Husain, who treated James during 2010, said that James stopped reporting delusional ideas. Dr. Husain believed that James was malingering to avoid trial. Dr. Husain changed James's diagnosis from delusional disorder to bipolar disorder.

¶ 26

Dr. Hanlon, who interviewed James two years prior to the fitness hearing and reviewed all his subsequent medical records, saw no evidence of manic episodes or any other symptoms to support a diagnosis of bipolarity. All tests showed no evidence of malingering.

According to Dr. Hanlon, the factors Dr. Husain relied on for her finding of malingering, the refusal to take medications and participate in treatment, could result from James's paranoid delusions.

¶ 27 The trial court needed to resolve the conflict between the testimonies of the two psychiatrists. This court usually defers to the trial court's assessment of the credibility of experts. *People v. Haynes*, 174 Ill. 2d 204, 231 (1996); *People v. Houseworth*, 388 Ill. App. 3d 37, 52 (2008). Dr. Husain treated James from February 2010 until the hearing in November 2010, and by April 2010, James had stopped making delusional assertions. James's reports of his delusions formed the primary basis for the diagnosis that he suffered from a delusional disorder that rendered him unfit for trial. In light of the apparent alleviation of the symptom that justified the finding of unfitness, we cannot say that the manifest weight of the evidence demanded a finding that James remained unfit to stand trial. The finding of fitness before trial does not warrant reversal.

¶ 28 Fitness for Sentencing

¶ 29 After the trial, the court permitted James to represent himself at the hearing on his motion for a new trial and at sentencing. James argued that many occurrences in the courtroom required a new trial. James accused his attorney of lying in court. James claimed that he and his attorney repeatedly asked for permission to have James represent himself at trial, and the trial court repeatedly denied the requests. James said that Lester's wife told the court that defense counsel sought payment from her for his services. The court and the prosecutor remembered no such occurrences, and the court said that James "presented here today things

that simply did not happen." The trial record supports the trial court's recollection, and not James's.

¶ 30 James now argues that his posttrial behavior raised a *bona fide* doubt of his fitness for sentencing, and therefore the trial court had a duty to hold a hearing on his fitness. See *People v. Sandham*, 174 Ill. 2d at 382 (1996). On this issue, James bears the burden of proving that facts known to the court "raised a real, substantial and legitimate doubt as to his mental capacity to meaningfully participate in his defense and cooperate with counsel." *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991). "[T]he circuit court has a duty to order a fitness hearing, *sua sponte*, any time a *bona fide* doubt arises regarding a defendant's ability to understand the nature and purpose of the proceedings or assist in his defense. Whether a *bona fide* doubt as to a defendant's fitness has arisen is generally a matter within the discretion of the trial court." *Sandham*, 174 Ill. 2d at 382. To decide whether a defendant's conduct raises a *bona fide* doubt of fitness, the court should consider the defendant's "irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial." *Drope v. Missouri*, 420 U.S. 162, 180 (1975). However, "no fixed or immutable signs \*\*\* 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.

¶ 31 For this appeal, we must consider what the trial court knew when it decided to sentence James without holding a hearing on his fitness for sentencing. See *Eddmonds*, 143 Ill. 2d at 513-14. The trial court knew that a number of psychiatrists had interviewed and treated James since his arrest, and all found him unfit to stand trial because of persistent delusions

that left him unable to participate meaningfully in his own defense. Some of the treating doctors later found James fit to stand trial, but only after James stopped making delusional assertions. Treating psychiatrists recommended antipsychotic medications, but James refused to take the prescribed medication. Then, in court, James made numerous assertions about what had happened in court, and what the judge and defense counsel had done. The judge and the prosecutor knew the assertions did not reflect actual occurrences in court. In view of James's history of delusions that affected his ability to participate in his defense, and the numerous mistaken assertions about what happened in the courtroom, when James apparently stood to gain nothing from the false assertions, we hold that the trial judge abused his discretion when he failed to rule, *sua sponte*, that James's behavior after the trial raised a *bona fide* doubt as to his fitness for sentencing. See *Sandham*, 174 Ill. 2d at 382-88. Accordingly, we remand the case for a retrospective fitness hearing.

¶ 32 Because our remand for a retrospective fitness hearing may lead to resentencing, we do not here address James's argument that the court imposed an unjust sentence.

¶ 33 CONCLUSION

¶ 34 The trial court's finding that James became fit to stand trial is not contrary to the manifest weight of the evidence. James's history of delusions, and his numerous mistaken assertions about occurrences in court required the court to hold a fitness hearing *sua sponte* before sentencing James. The court must hold a retrospective fitness hearing on remand.

¶ 35 Remanded with directions.