2017 IL App (1st) 143265-U

FOURTH DIVISION
June 8, 2017

No. 1-14-3265

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. 98 CR 23697
	)	
APRIL GOODMAN,	)	Honorable
	)	Arthur F. Hill,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

Held: We find no abuse of discretion in the trial court's determination that defendant was competent for postconviction purposes and affirm the trial court's order reinstating the dismissal of her postconviction petition.

¶ 1 Defendant April Goodman appeals the trial court's reinstatement of its order dismissing her postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122–1 *et seq*. (West 2010)) following an evidentiary hearing. On appeal, defendant challenges the trial court's determination that she was fit for postconviction proceedings. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 In 1998, the State charged defendant with solicitation of murder for hire for hiring an individual to kill her ex-husband. The jury convicted defendant in 2000 and the trial court sentenced defendant to 30 years' imprisonment. This court affirmed her conviction and sentence on direct appeal. *People v. Goodman*, 347 Ill. App. 3d 278 (2004). The trial court determined before trial and sentencing that defendant was fit to stand trial and fit for sentencing. *Id.* at 280-81, 291.

¶ 4 The attorney initially retained to pursue postconviction relief filed a motion to stay the time limit for filing a postconviction petition. Counsel asserted that defendant was not culpably negligent with regard to filing a petition as counsel was unable to effectively communicate with her due to her mental state. The trial court denied the motion. Counsel then filed a postconviction petition on December 20, 2005. The trial court dismissed this petition at the first stage.

¶ 5 Defendant appealed the dismissal of the petition and the denial of her request for additional time to file. This court vacated the trial court's rulings in an unpublished order. *People v. Goodman*, No.1-06-0030 (August 10, 2007) (unpublished order under Supreme Court Rule 23). This court remanded the cause to determine whether a *bona fide* doubt existed as to defendant's competence to consult with postconviction counsel. This court ordered that if the trial court found no *bona fide* doubt existed, it should reinstate the dismissal of the postconviction petition. If the trial court determined that a *bona fide* doubt was in fact raised, it may order a psychiatric evaluation and conduct an evidentiary hearing to determine defendant's competency to consult with postconviction counsel. If the trial court ultimately concluded that defendant was not competent, it was ordered to remand defendant to the Department of

Corrections until fit. If the trial court found defendant competent to consult with counsel, then the trial court was directed to reinstate its judgment dismissing the postconviction petition. *Id.*

¶ 6 On June 6, 2008, the trial court found on remand that a *bona fide* doubt existed as to petitioner's competency to consult with postconviction counsel and ordered an evaluation and an evidentiary hearing for a retrospective fitness determination, that is, to determine whether defendant was mentally able to confer with counsel during the time period of approximately December 22, 2004 and early 2005, around the time her postconviction counsel conferred with her regarding the petition.

¶ 7 After numerous continuations, the trial court held an evidentiary hearing on the retrospective fitness issue on August 13, 2014. The parties stipulated to the admission of the deposition testimony of defendant's initial postconviction counsel, Frederick Cohn.[1]

¶ 8 Cohn testified that he met with defendant on approximately December 22, 2004, for three or four hours at the prison where she was incarcerated. He was aware of her mental health issues. He testified that she did not give responsive answers to his questions, but instead talked about former Vice President Dick Cheney and the FBI. Cohn opined that defendant believed what she was saying. She spoke rapidly and changed topics quickly. Cohn tried to ask different questions, but was unable to communicate with her. He testified that defendant understood that he was her lawyer and she was able to discuss the fact that she had a trial, was found guilty, pursued an appeal, and her trial strategy was that she was not guilty. However, Cohn testified that defendant was unable to provide information he needed to pursue postconviction relief. He sought to stay the time limit for filing the postconviction petition, asserting that defendant was unable to assist him. He met with her only once and he believed it would be futile to meet again. When his

[1] The record reflects that Cohn became ill during the pendency of postconviction proceedings and the parties took his deposition on December 11, 2013, to preserve his testimony before he passed away.

request for a stay was denied, he filed a petition raising a claim of ineffective assistance of counsel based on his review of the record and the law.

¶ 9 At the hearing, the State presented the testimony of Dr. Matthew Markos, director of the forensic clinical services department of Cook County.[2] Dr. Markos performed a retrospective fitness evaluation of defendant to determine her fitness on December 22, 2004. He adhered to the guidelines set forth in *People v. Owens*, 139 Ill. 2d 351 (1990). In preparation, he reviewed defendant's extensive medical records, including his own prior evaluations, Illinois Department of Corrections (IDOC) records, Cohn's deposition, a report prepared by the defense's expert Dr. Stephen Dinwiddie, and court transcripts and documents.

¶ 10 Dr. Markos testified that he reviewed IDOC records from 2001 to 2005 prepared by psychiatrists and psychologists responsible for her diagnosis and treatment at the IDOC. Dr. Markos testified that psychiatrists' reports from 2001 indicated that defendant demonstrated good hygiene but had grandiose ideations or delusions regarding the FBI, Janet Reno, and the mafia, and she was diagnosed with bipolar disorder and possibly a delusional disorder, but not schizophrenia. The report related that defendant expressed her views about her trial and her assessment of the type of witness presented against her, *i.e.*, an undercover agent, and her view that she had been set up. Although she persisted in her beliefs regarding the FBI, Janet Reno, and the mafia, she did not indicate that she believed she was prosecuted by Reno or that someone from the mafia testified at her trial, and she was well groomed, appropriately dressed, alert, oriented, pleasant, and cooperative. The reports indicated that she did well in group therapy but

[2] Dr. Matthew Markos testified that he has served as the director for 20 years and is a board-certified physician in general psychiatry and forensics. He also was appointed to serve on a national panel with the National Judicial College to develop best a practices model for mental competency. He has performed approximately 10,000 fitness evaluations for Cook County Circuit Court. Some of those evaluations involved postconviction fitness. He has testified regarding his fitness evaluations approximately 4,000 times, with roughly half for the defense and half for the State.

had difficulty adjusting to prison and experienced a conflict with a former roommate. A report dated March 31, 2001, indicated that "no formal thought disorder was evident."

¶ 11 Dr. Markos also reviewed a report from September 2004, which noted that defendant refused to take psychotropic medication and was "slightly circumstantial at times." Dr. Markos explained that this means a person describes an issue without getting to the point directly. She was oriented as to time, place, and person; she had "fair" concentration; and she did not exhibit suicidal or homicidal ideations or depression. Another report from October 2004 related that defendant was still refusing psychotropic medication and was "obsessed with thoughts of CIA," but her personal hygiene was "intact," she ate regularly, and she did not meet the criteria for enforced medication. A report from November 2004 indicated that defendant was still not taking medication, she was in "a good mood" and "is doing fine," she was alert, oriented as to person, and there was no evidence that she was "acutely decompensated." She told the treating psychiatrist authoring the report that "I really am not going to talk about anything today, so I don't know why I really have to see you." Dr. Markos testified that defendant's statement was "a goal-directed remark and she's able to communicate her desire not to talk to the doctor." He indicated that a person with bipolar disorder can still engage in goal-directed behavior and the statement was not diagnostic of any mental illness.

¶ 12 Dr. Markos also reviewed medical reports from after December 22, 2004. He testified that a report from January 13, 2005, related that defendant was frustrated, anxious, and concerned about her legal status and a cellmate issue. She was referred for and accepted treatment at a mental health unit. She exhibited symptoms of bipolar disorder in that she was tangential, circumstantial, and had pressure of speech. She continued to refuse psychotropic medications but did not meet the criteria for enforced medication.

¶ 13 Dr. Markos testified that in all of the reports there was "clear documentation that [defendant] was oriented to time, place and person ***."

¶ 14 Dr. Markos personally examined defendant on September 14, 2010, for 45 to 60 minutes. He testified that she was cooperative and was able to communicate with him, she discussed her case and "provided logical, appropriate and coherent responses to questions put forward to her." She recognized Dr. Markos immediately because he had examined her on four previous occasions. Defendant was calm, pleasant, and oriented as to time, place, and person. Defendant told him that she does not need medication because she does not have bipolar disorder and she experienced negative side effects. She stated that she has post traumatic stress disorder. She did not show anxiety or agitation and her responses to questions were "coherent, relevant, and appropriate."

¶ 15 Dr. Markos testified that when they discussed her legal case, she became anxious, agitated, tangential, circumstantial, and had pressure of speech. However, Dr. Markos testified that he was "able to redirect her back to the topic or issue at hand and proceed with the evaluation" and "there was no[] evidence of any thought disorder." She did not exhibit delusions or hallucinations, she was not suicidal or homicidal, she showed no evidence of cognitive or intellectual deficits, and her "fund of knowledge, vocabulary, concentration, grasp, recent and remote memory was excellent and I received full cooperation from her ***." She recounted events with precision, including dates and information regarding her case. She understood why she was in the IDOC, she knew who her attorney was and that her mother had retained him, and she was able to discuss prior attorneys. She indicated her displeasure with her trial attorneys' representation. Dr. Markos testified that "it was evident that [defendant] has above average intelligence and has good memory for both recent and remote events."

¶ 16 Dr. Markos testified that defendant provided accurate descriptions of the role of the defense attorney, prosecutor, a judgment, and jury in a trial, and understood the concept of a plea bargain, evidence, and a witness. Dr. Markos testified that he occasionally had to redirect defendant, but the fact that he was able to redirect her demonstrated that defendant "was not truly manic or had a thought disorder" and she "had the capacity to come back to the issue at hand as opposed to a patient with bipolar disorder and who is manic with racing thoughts and poor concentration and easy distractibility where it would be difficult to get that person to focus or redirect that person to a specific issue." Dr. Markos testified that she did not demonstrate any psychotic symptoms of any kind such as fixed delusions or irrational beliefs. He also so no signs of schizophrenia.

¶ 17 Based on his training, experience, review of defendant's records, and his examination, Dr. Markos opined that defendant "on or about December 22nd, 2004, was mentally fit for postconviction proceedings." Dr. Markos opined that defendant had narcissistic personality disorder which entails feelings of grandiosity or self-importance and is manifested by fantasies and a feeling of being superior, but this would not prevent a person from being able to communicate.

¶ 18 On cross-examination, Dr. Markos reaffirmed that defendant did not have a mental illness or defect which would have precluded her ability to communicate with counsel on December 22, 2004. Although she became agitated, had pressured speech, and showed circumstantiality and tangentiality when the subject of her legal case arose, Dr. Markos was able to redirect her. He acknowledged that Cohn testified to his difficulty communicating with defendant, but Dr. Markos did not believe that these traits were sufficient to impede her ability to communicate with counsel. The purpose of his examination was to determine whether defendant had the

capacity to communicate, and not whether Cohn could communicate with her. Dr. Markos acknowledged that having a formal thought disorder or fixed grandiose ideations could impact a person's ability to communicate with their counsel. He disagreed that defendant's symptoms were consistent with schizophrenia as delusions are only one of many symptoms.

¶ 19 The defense presented the testimony of Dr. Stephen Dinwiddie, defendant's mother Sylvia Vanderbilt, and Madeleine Ward, who was a former fellow inmate of defendant's. The defense also admitted into evidence defendant's guardianship file.

¶ 20 Dr. Dinwiddie, a board certified psychiatrist and professor at Northwestern University Feinberg School of Medicine, testified for the defense as an expert in forensic psychiatry. He had testified approximately 200 times. He was hired in 2013 to examine defendant in relation to a clemency petition. He also reviewed her mental health records.

¶ 21 In Dr. Dinwiddie's examination of defendant, she was polite and cooperative. Dr. Dinwiddie testified that defendant was very talkative and her speech was pressured, circumstantial, and tangential. She had difficulty staying on topic and answering questions. Dr. Dinwiddie opined that defendant had a disorder of thought, and not merely narcissism. Dr. Dinwiddie testified that defendant's claims regarding the FBI, the mafia, and that she was going to marry John F. Kennedy, Jr., were clearly delusional and grandiose. He testified that she had fixed, false beliefs about being persecuted. He opined that she suffered from schizophrenia, possibly since her mid-20s.

¶ 22 With respect to defendant's retrospective mental status in 2004 and 2005, Dr. Dinwiddie opined that defendant would not have been able to effectively communicate with postconviction counsel. Dr. Dinwiddie based this conclusion on his determination that defendant had a thought disorder and evidence of delusions, as indicated by Cohn's deposition testimony. He opined that

defendant could not have an "effective working relationship" and she was unable to assist counsel with formulating a legal strategy or rationally and meaningfully communicate with counsel. He testified that he weighed defendant's delusions "more heavily" than Dr. Markos and believed they prevented meaningful communication, strategizing, or discussing the facts with counsel. He characterized her illness as chronic and progressive.

¶ 23 On cross-examination, Dr. Dinwiddie was questioned regarding the difference between fitness determinations in the trial and postconviction context. Dr. Dinwiddie conceded that he had never evaluated a patient for postconviction competency before. He conceded that defendant was able to communicate regarding simple topics such as whether she was hungry, and that she was able to communicate with Dr. Markos regarding her trial and professed her innocence. He opined that defendant's profession of innocence was itself based on a delusion and that she was unable to "manipulate the concepts and work with the attorney in a way to meaningfully assist in her defense."

¶ 24 Madeleine Ward testified that she was a fellow innate of defendant's at Dwight Correctional Center from January 2006 to April 2009 and petitioner's thoughts seemed disconnected and she spoke of bizarre topics.

¶ 25 Defendant's mother and guardian of her estate, Sylvia Vanderbilt, testified that she had weekly or daily contact with defendant between 2004 and 2005 at prison visits and defendant seemed depressed and spoke rapidly. Vanderbilt had difficulty understanding defendant regarding events in the prison and defendant jumped from subject to subject quickly, unless she talked about a simple subject like the weather. Vanderbilt recounted one instance where defendant told her about another cellmate who had harmed her. Vanderbilt testified that it was

difficult to understand her daughter and took several attempts and she also spoke to other sources such as defendant's doctor, but Vanderbilt eventually understood what had occurred.

¶ 26 Following closing arguments, the trial court issued its decision on October 2, 2014. The trial court recounted the procedural history of the case and extensively summarized the evidence presented. The trial court was troubled by Dr. Dinwiddie's testimony that defendant's profession of innocence to Dr. Markos was delusional. The court found Vanderbilt's testimony "very instructional and very illustrative," citing the incident when defendant was harmed by her cellmate. The trial court observed that while it was "challenging" for Vanderbilt to get information from defendant, she eventually found out what happened from her daughter. The court found that defendant "has some mental health challenges" which are exacerbated when discussing serious, important, or disturbing topics, but that she "can be redirected." The court specifically held that "April Goodman was able to communicate with Attorney [C]ohn in December of 2004." The trial court recognized that "[i]t may not have been easy, but it's not impossible and I don't think that the evidence shows that the bar is so high until it's next to impossible, I don't." Citing *Owens*, the court held that defendant was able to communicate effectively with postconviction counsel. The court reinstated its previous order dismissing the postconviction petition and denying the motion for an extension of time. Defendant now appeals.

¶ 27 II. ANALYSIS

¶ 28 i. Standard of Review

¶ 29 The Act provides a mechanism for criminal defendants to collaterally attack their convictions. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). Postconviction proceedings are commenced by filing a petition which clearly sets forth how the defendant's constitutional rights were violated. *Id.* (quoting 725 ILCS 5/122–2 (West 2006)). "During postconviction

proceedings, the burden is on defendant to make a substantial showing of a deprivation of a constitutional right. [Citation.] Defendant is entitled to an evidentiary hearing only if the defendant meets this burden; the circuit court accepts as true all well-pleaded facts in the petition and supporting affidavits." *People v. Shum*, 207 Ill. 2d 47, 57 (2003). Our review of a circuit court's dismissal of a postconviction petition is *de novo*. *Id.*; *Hodges*, 234 Ill. 2d at 9.

¶ 30 We review a trial court's fitness determination in postconviction proceedings for an abuse of discretion. *Shum*, 207 Ill. 2d at 62. This occurs when a ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *Id*.

¶ 31 ii. Postconviction Fitness Determination

¶ 32 In *Owens*, the Illinois Supreme Court ruled that Section 122-4 of the Code of Criminal Procedure and Supreme Court Rule 651 work in conjunction to "ensure that post-conviction petitioners in this State receive a reasonable level of assistance by counsel in post-conviction proceedings." *Owens,* 139 Ill. 2d at 359 (citing Ill.Rev.Stat.1987, ch. 38, par. 122–4; 107 Ill.2d R. 651). The court held that "the rule is not satisfied where appointed counsel cannot determine whether a post-conviction petitioner has any viable claims, because the petitioner's mental disease or defect renders him incapable of communicating in a rational manner. In either circumstance, 'the appointment of an attorney is but an empty formality.' " *Id.* at 359-60 (quoting *People v. Garrison,* 43 Ill.2d 121, 123 (1969)).

¶ 33 Accordingly, when the issue of postconviction fitness is raised, the trial court must determine whether there is a "*bona fide* doubt as to the petitioner's mental ability to communicate with his post-conviction counsel." *Id.* at 362. This determination "rests largely within the discretion of the trial court, which is in the best position to observe the petitioner and evaluate his conduct." *Id.*

¶ 34 However, the *Owens* court observed that a defendant may nevertheless be competent to participate in postconviction proceedings despite having mental disturbances or requiring psychiatric treatment. *Id.* Considering that a defendant must have been deemed competent to be tried and sentenced, the supreme court held that the trial court "may properly presume that the petitioner remains competent at the time of post-conviction proceedings, and require a substantial threshold showing of incompetency to trigger the right to a psychiatric evaluation or an evidentiary hearing on the question." *Id.* at 362-63.

¶ 35 In addition, the supreme court in *Owens* determined that "a greater degree of incompetence must be shown to demonstrate that a petitioner is not competent to participate in post-conviction proceedings than is required to show that a defendant is not competent to stand trial." *Id.* at 363. In order to be unfit to stand trial, a defendant must be "unable to understand the nature and purpose of the proceedings against him or to assist in his defense." *Id.* In contrast, a defendant is considered unfit in postconviction proceedings "only if he demonstrates that he, because of a mental condition, is unable to communicate with his post-conviction counsel in the manner contemplated by section 122–4 of the Code of Criminal Procedure and Supreme Court Rule 651." *Id.* A lower level of competency is appropriate in postconviction proceedings because it is merely a collateral attack that is civil in nature and guilt or innocence is not at issue. *Id.* Further, unlike trial proceedings, the right to counsel is derived from statute in postconviction proceedings, not from the Constitution. *Id.* at 364. As such, postconviction petitioners are guaranteed only a statutory "*reasonable* level of assistance ***." *Id.* Postconviction counsel serves to assist in properly presenting the legal claims initiated by the defendant. *Id.* at 364-65. Where a trial court finds a *bona fide* doubt exists as to a defendant's ability to communicate with counsel in postconviction proceedings, it may order a psychological evaluation and evidentiary

hearing. *Id.* at 365. The trial court must then "determine whether a petitioner is competent to consult with his appointed counsel." *Id.* If a petitioner is found not competent, he shall be remanded to the IDOC until fit. *Id.*

¶ 36 On appeal, defendant argues that the trial court abused its discretion in finding that she was able to communicate effectively with postconviction counsel, citing primarily the testimony of Dr. Dinwiddie and Cohn.

¶ 37 Pursuant to *Owens*, we start with the presumption that defendant was fit for postconviction proceedings. *Owens*, 139 Ill. 2d at 362; *Shum*, 207 Ill. 2d at 62. Notably, defendant was previously found fit to stand trial and be sentenced under a more demanding standard. *Owens*, 139 Ill. 2d at 363; *Shum*, 207 Ill. 2d at 62. In addition, there was ample evidence supporting the circuit court's determination that defendant satisfied the lower standard of fitness applicable in postconviction proceedings. Dr. Markos clearly explained his opinion that defendant met the standard under *Owens* and was capable of communicating with postconviction counsel. Dr. Markos opined that although communication was difficult, and despite her frequent circumstantial, tangential, and delusional statements, defendant was ultimately able to be redirected. The record supports that defendant clearly understood and was able to discuss her trial, witnesses, attorneys, and other aspects of her case.

¶ 38 As our supreme court has observed, "[e]vidence that a defendant is mentally unsound does not necessarily establish that he or she is unfit to stand trial because the fitness standard only concerns defendant's ability to understand the proceedings and assist counsel, not mental fitness in other areas of life." *Shum*, 207 Ill. 2d at 59 (citing *People v. Easley*, 192 Ill. 2d 307, 322 (2000)). In *Shum*, the supreme court found no abuse of discretion in the trial court's finding that the defendant was fit for postconviction proceedings where the testimony of two State expert

witnesses conflicted with that of the defense expert. *Id.* at 62-63. The State's experts testified at the fitness hearing that although the defendant refused to cooperate with his attorneys, this was volitional and not compelled by mental illness where he showed no signs of brain damage or mental disorder. *Id.* at 60-61. In contrast, the defense expert opined that the defendant was unfit as his delusional beliefs prevented him from assisting his attorneys and his failure to cooperate was not volitional. *Id.* at 61-62. The defense expert did not review trial transcripts or prior fitness evaluations related to trial and sentencing, and he was not notified of the *Owens* standard of fitness until after interviewing the defendant. *Id.* at 61. In affirming the trial court's decision, the supreme court stated that "the circuit court considered the testimony of all three expert witnesses and found defendant fit under the *Owens* standard." *Id.* at 63.

¶ 39 Similarly, in the present case, we do not find the trial court's decision to credit Dr. Markos' opinion unreasonable considering the evidence presented at the hearing, including Dr. Markos' qualifications and extensive experience in performing postconviction fitness evaluations. This stood in contrast to Dr. Dinwiddie, who conceded that he had never provided an evaluation of postconviction fitness under the *Owens* standard. Dr. Markos based his opinion on his review of defendant's extensive medical and psychological records, Cohn's deposition, the trial proceedings, and his own knowledge, experience, and direct evaluation of defendant. The trial court considered all of the testimony and exhibits submitted at the hearing and determined that defendant was fit under the *Owens* standard. On the record, we cannot say that this finding was arbitrary, fanciful, or unreasonable, or that no reasonable person would agree. *Shum*, 207 Ill. 2d at 62.

¶ 40 III. CONCLUSION

¶ 41 Accordingly, we affirm the circuit court's determination that defendant was fit for postconviction proceedings. We affirm the circuit court's reinstatement of its dismissal of defendant's postconviction petition and denial of the motion for an extension of time.

¶ 42 Affirmed.