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2013 IL App (4th) 120434-U  
NO. 4-12-0434  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
October 30, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, ) Appeal from  
Plaintiff-Appellee, ) Circuit Court of  
v. ) Sangamon County  
RAYNALDO D. BROWN, ) No. 08CF840  
Defendant-Appellant. )  
) Honorable  
) Peter C. Cavanagh,  
) Judge Presiding.

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PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Pope and Turner concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed the trial court's judgment, rejecting the defendant's argument that the court abused its discretion by denying his counsel's motion for examination to determine the defendant's fitness to be sentenced.
- ¶ 2 In July 2011, the State filed an amended petition to revoke the probation of defendant, Raynaldo D. Brown, because he failed to comply with the terms of his December 2009 fully negotiated guilty plea to robbery.
- ¶ 3 Following a December 2011 hearing on the State's petition, the trial court revoked defendant's probation. In February 2012, the court resentenced defendant to three years in prison. Defendant's counsel then filed a motion for examination to determine fitness to be sentenced, asserting that he had just been informed that defendant "had no idea what was transpiring" at his sentencing hearing because he was "specially challenged." Following a May 2012 hearing, the

court denied defendant's motion, finding no *bona fide* doubt existed as to defendant's fitness.

¶ 4 Defendant appeals, arguing that the trial court abused its discretion by denying his counsel's motion for examination to determine defendant's fitness. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In December 2009, defendant pleaded guilty to robbery (720 ILCS 5/18-1(a) (West 2008)). In exchange for his plea, the State dismissed a theft charge (720 ILCS 5/16-1(b)(4) (West 2008) and recommended that the trial court sentence defendant to two years' probation. Prior to accepting defendant's guilty plea, the following exchange occurred among the court, defendant, and defendant's counsel, Lindsay Evans:

"THE COURT: How old are you, sir?

[DEFENDANT]: Eighteen.

THE COURT: How far did you go in school?

[DEFENDANT]: Eleventh.

THE COURT: Do you read, write[,] and understand English?

[DEFENDANT]: Yes, sir.

THE COURT: Have you ever been confined in a mental institution or under the care of a psychiatrist?

[DEFENDANT]: Yes, sir.

THE COURT: \*\*\* [W]hen was that?

[DEFENDANT]: \*\*\* [W]hen I was like [11] or [12 years old].

THE COURT: You were in a mental institution?

[DEFENDANT]: No, psychiatrist.

THE COURT: You saw a psychiatrist?

[DEFENDANT]: Yes.

THE COURT: Are you still seeing him?

[DEFENDANT]: (Nodding head up and down.)

THE COURT: Are you taking medication?

[DEFENDANT]: Yes, sir.

THE COURT: \*\*\* Evans, do you have any concerns about your client's ability to understand what is happening here \*\*\*?

[DEFENSE COUNSEL]: At this time, no, Your Honor. [Defendant] has been accompanied to court more often than not with his mother, and we have had a lot of conversations between the three of us. I believe that he possesses the capacity to proceed today. I think that he understands me.

THE COURT: What do you say about that, [defendant]? Do you understand what's happening here today?

[DEFENDANT]: \*\*\* I understand I am getting probation.

THE COURT: \*\*\* [D]o you understand that you are pleading guilty to a robbery charge?

[DEFENDANT]: Yes, sir.

\* \* \*

THE COURT: Do you understand that for two years if your probation is revoked, you are going to be sent to the Department of Corrections [(DOC)]? Do you understand that if you fail to do what you are supposed to do on your probation, you will be sent away? Do you understand that?

[DEFENDANT]: Uh-huh.

THE COURT: When I say sent away, more than likely you will be sent to the [DOC]. Do you understand that?

[DEFENDANT]: Yes, sir.

THE COURT: Do you know what the [DOC] is?

[DEFENDANT]: Jail.

THE COURT: Prison.

[DEFENDANT]: Prison.

THE COURT: Jail is behind me, in Sangamon County.

The [DOC] is bigger facilities throughout the State. Do you understand?

[DEFENDANT]: Yeah."

After admonishing defendant further, the court accepted his guilty plea and sentenced him to two years' probation. The court also ordered defendant to make restitution to his victim, pay court costs, obtain a substance-abuse evaluation, and comply with any recommended treatment.

¶ 7 In May 2010, the State filed a petition to revoke probation, alleging that in addition to numerous other probation violations, defendant drove a vehicle several times while

his license was suspended. At an August 2010 hearing on the State's petition, defendant admitted that he violated his probation when in April 2010, he drove a vehicle while his license was suspended. By agreement of the parties, the trial court amended defendant's sentencing order, mandating that he serve three consecutive weekends in jail beginning in August 2010.

¶ 8 In April 2011, the State filed a second petition to revoke probation, which in July 2011, the State amended. Specifically, the State alleged that defendant (1) committed the offense of unlawful possession of a weapon by a felon in February 2011; (2) committed the offense of driving while under the influence in July 2011; (3) failed to report to probation services on five different days that spanned from January to July 2011; (4) did not satisfy various financial obligations; and (5) did not begin substance abuse treatment.

¶ 9 In July 2011, Michael Costello, a private attorney, entered his appearance on defendant's behalf. The trial court discharged the public defender's representation and continued the matter.

¶ 10 At a December 2011 hearing on the State's amended petition, defendant testified that he missed his probation appointments because he lacked transportation. Defendant admitted that he was a drug addict who had consumed cannabis and ecstasy during his probation but asserted he was willing to attend a drug treatment program. Following argument, the trial court found that defendant had violated the terms of his probation and thereafter it scheduled a resentencing hearing.

¶ 11 At a February 15, 2012, resentencing hearing, Costello sought to amend defendant's presentence investigation report (PSI) to include that defendant suffered from sleep apnea, asthma, bronchitis, opposite defiant disorder, and post-traumatic stress disorder (PTSD) that was

caused by an injury of his best friend and the death of defendant's grandmother. In addition, Costello noted that defendant was a high school honor roll student who was awarded a \$25,000 academic scholarship from the Urban League to defray college costs at the University of Illinois.

¶ 12 The State objected, informing the trial court that defendant received only 2 1/2 credits from high school, which called into question his honor roll status and college scholarship. The State also noted that no medical doctor had diagnosed defendant with PTSD. Over the State's objection, the court amended defendant's PSI.

¶ 13 In his allocution, defendant informed the trial court that, in this case, he complied with the terms of his probation by staying out of trouble. When he could not make his probation appointments, defendant stated that he called probation services to inform that office of his absence. Defendant opined that the aftermath of his December 2009 guilty plea was similar to a prison sentence in that he could not find a job and had to rely on his mother for everything. Defendant informed the court that he did not "feel like I did everything [(sic)] or commit any crime."

¶ 14 The trial court thereafter resentenced defendant to three years in prison. In so doing the court stated, as follows:

"[Defendant], you made a deal with the State when you accepted this sentence, and the deal was you were to comply with all the terms of probation. You failed to comply with the terms. You've been charged with a new offense, although [the Court is] not considering that offense in setting the sentence here today. You made a deal, didn't live up to the deal, so therefore this sen-

tence is appropriate."

¶ 15 A week after his resentencing hearing, defendant filed separate motions to reconsider sentence and for examination to determine fitness to be sentenced. In his motion for examination, Costello contended—for the first time—that he had a *bona fide* belief that defendant was unfit to be sentenced. Costello noted that "defendant could not cooperate and prepare for sentencing including review of [his PSI], and that he learned that defendant was specially challenged subsequent to his February 2012 sentencing hearing. Costello asserted that "[i]t became obvious during the sentencing hearing when the [c]ourt was questioning \*\*\* [d]efendant that he had no idea what was transpiring due to being specially challenged."

¶ 16 In addition to the aforementioned filings, Costello also filed a synopsis from the Southern Illinois University Healthcare Center for Family Medicine, which covered September 2007 through December 2011. That filing contained a historical account of defendant's "Active Problem[s]" and in some cases, the associated "Assessment" on the following conditions: (1) snoring, (2) sleep apnea, (3) tobacco use, (4) depression, (5) PTSD, (6) obsessive-compulsive disorder, (7) conduct disorder, (8) seasonal allergic rhinitis (inflammation of the mucous membrane inside the nose), (9) dystonia (muscle twitching), (10) asthma, and (11) attention deficit hyperactivity disorder (ADHD).

¶ 17 At a March 14, 2012, hearing on defendant's motions, Costello called into question defendant's fitness, explaining, as follows:

"We also have filed a Motion for Examination to determine \*\*\* Defendant's fitness to be sentenced. This occurred \*\*\* during the conference prior to the Court's sentencing, and the Defendant

was, I would suggest, unresponsive to any questions and any answers that were given, were given by his mother who was present during this conference, and from that he wasn't able to cooperate with counsel during that meeting, and I would suggest that he should be examined. I have grave concerns as to whether or not he was fit to stand trial."

¶ 18 After the State provided its rationale why the trial court should reject defendant's motion to reconsider, the court denied that motion, noting that the court had imposed a minimum sentence. Thereafter the following exchange occurred:

"COSTELLO: Your honor, if I may address two things.

It's not a question of when \*\*\* fitness for sentencing is raised. \*\*\* If it is raised, and there's a *bona fide* doubt suggested by counsel or by the [State] that the Defendant was unfit at the time of sentencing, \*\*\* case law says the Court should consider it and determine [whether] it's frivolous or order a sentence evaluation.

\* \* \*

THE COURT: All right, here's what [the Court is going to] do. [The court] considers it frivolous. [The Court] thought [its] ruling was clear; however, [the Court will] provide \*\*\* Defendant yet another opportunity. If you want to present [the Court] with case law to show \*\*\* why it is not frivolous, [the Court will] consider it, but for now, [the Court's] ruling stands. If you want to

file a [m]otion to [r]econsider this ruling with case law, [the Court will] look at it."

¶ 19 On March 28, 2012, defendant filed a memorandum in support of his motion for examination to determine fitness to be sentenced. In that memorandum, defendant cited *Pate v. Robinson*, 383 U.S. 375, 385 (1966), and *People v. Thompson*, 36 Ill. 2d 332, 334, 223 N.E.2d 97, 98 (1967), for the proposition that failure to hold a fitness hearing is reversible error where a possibility exists that a defendant is unable to assist in his defense or understand the nature of the charges.

¶ 20 At a hearing held the following day, Costello argued that Illinois law permits a defendant to raise the issue of fitness at any time. The trial court, noting that it only had defense counsel's account, granted Costello more time to file a motion substantiating further defendant's fitness issue. In so doing, the court vacated its denial of defendant's motion to reconsider.

¶ 21 In April 2012, defendant filed a second memorandum in support of motion for examination to determine fitness to be resentenced, claiming that based on the transcripts of proceedings at his February 2012 resentencing hearing and his "mental-health record," a *bona fide* doubt existed as to his fitness. Because of this doubt, defendant asserted, "it was incumbent upon the trial court \*\*\* to make a determination of fitness before proceeding further." Defendant requested that the court vacate his sentence and "remand the cause for resentencing."

¶ 22 At a May 2012 hearing, Costello reiterated his concern that a *bona fide* doubt existed "as to \*\*\* [d]efendant's understanding [of] the nature of the charges and his ability to cooperate with counsel." Costello based his concerns on defendant's conduct during his February 2012 resentencing hearing, his "long-past, psychological and psychiatric treatment," and

conversations Costello had with defendant's mother.

¶ 23 After the State argued that defendant failed to establish a *bona fide* doubt as to his fitness, the trial court found, as follows:

"Very well. Mister Costello, the motion will be denied.

[The Court has] spent some time with this Defendant. I never had anything to lead me to believe that there was anything to doubt his fitness, but in an abundance of caution, [the Court has] allowed [this] motion to get to this stage to ensure [the court] that he is not unfit, and there's nothing in the record, literally nothing, to suggest that he might be other than perhaps having been explained his rights a couple of times. There's just not a scintilla of facts to suggest that there's a doubt, so your motion is denied."

¶ 24 This appeal followed.

## ¶ 25 II. THE TRIAL COURT'S FITNESS FINDING

¶ 26 Defendant appeals, arguing that the trial court abused its discretion by denying his counsel's motion for examination to determine defendant's fitness. We disagree.

¶ 27 Section 104-10 of the Code of Criminal Procedure of 1963 provides, as follows:

"A defendant is presumed to be fit to stand trial or to plead, and be sentenced. 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 2010).

"The presumption of fitness is rebutted by evidence a defendant is 'unable to understand the nature and purpose of the proceedings against him or [to] assist in his defense.'" *People v. Weeks*, 393 Ill. App. 3d 1004, 1008, 914 N.E.2d 1175, 1180 (2009), quoting *People v. Redd*, 173 Ill. 2d 1, 23, 670 N.E.2d 583, 594 (1996)).

¶ 28 " 'Because it is a violation of due process to convict a defendant who is mentally unfit to stand trial, a judge has a duty to order a fitness hearing *sua sponte* once facts are brought to the judge's attention that raise a *bona fide* doubt of the accused's fitness to stand trial or be sentenced.' " *People v. Stephens*, 2012 IL App (1st) 110296, ¶ 90, 980 N.E.2d 654 (quoting *People v. McCallister*, 193 Ill. 2d 63, 110-11, 737 N.E.2d 196, 220 (2000)). "The *bona fide* doubt inquiry is focused primarily on whether the defendant is able to understand the nature and purpose of the proceedings and to assist in his defense." *McCallister*, 193 Ill. 2d at 110, 737 N.E.2d at 220.

¶ 29 When assessing whether a *bona fide* doubt exists, relevant factors a trial court may consider include a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial. *Stephens*, ¶ 91. The question of whether a *bona fide* doubt of fitness exists is a fact-driven inquiry that cannot be assessed under a set of fixed or established factors. *Id.* "The standard of review regarding the issue of whether a *bona fide* doubt existed as to defendant's fitness is abuse of discretion." *People v. Palmer*, 382 Ill. App. 3d 1151, 1157, 889 N.E.2d 244, 249 (2008).

¶ 30 In this case, defendant bases his claim that a *bona fide* doubt existed as to his fitness on the representations made by his counsel regarding defendant's behavior at his presentencing conference and defendant's medical history. In this regard, defendant relies, in

part, on his counsel's various claims that defendant was unresponsive, uncooperative, did not comprehend the nature of the case because he believed he was not guilty, and his "copious history of mental-health problems," which included PTSD and ADHD.

¶ 31 The trial court, mindful of the importance of defense counsel's representations regarding defendant's status, must still exercise sound judgment and discretion regardless of those representations. See *People v. Eddmonds*, 143 Ill. 2d 501, 518, 578 N.E.2d 952, 959 (1991) ("The representations of defendant's counsel concerning the competence of his client, while not conclusive, are another important factor to consider"). Here, the record shows that the trial judge had presided over defendant's case from its inception in August 2008 and undoubtedly had a sense of defendant's mental acumen. Notwithstanding that interaction, the court, in an abundance of caution, permitted defendant's counsel to buttress his fitness claim, which the court ultimately found was devoid of merit. Nonetheless, the record clearly shows that the court viewed Costello's representations as important factors for the court's consideration.

¶ 32 Defendant urges this court to conclude that the trial court abused its discretion by denying his motion for examination to determine fitness to be sentenced. To do so, however, would require this court to conclude that based on this record, no reasonable person could take the view adopted by the court. See *In re Estate of Hanley*, 2013 IL App (3d) 110264, ¶ 78, ("Abuse of discretion occurs when no reasonable person could take the view adopted by the trial court"). We decline to do so.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the trial court's judgment.

¶ 35 Affirmed.