2016 IL App (1st) 151912

THIRD DIVISION
November 30, 2016

Nos. 1-15-1912 & 1-15-2208

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14 MC 6000001
	)	
EUGENE BROWN, JR.,	)	
	)	
Defendant-Appellant.	)	The Honorable
	)	Alfredo Maldonado,
	)	Judge Presiding.
	)	

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 Defendant Eugene Brown appeals from an order of the circuit court adjudicating him unfit to stand trial in a criminal case. He now challenges that determination, arguing the decision was against the manifest weight of the evidence and the absence of an on-the-record jury waiver requires reversal. We affirm.

¶ 2 BACKGROUND

¶ 3 Defendant was arrested and charged with falsely impersonating a police officer in violation of section 17-2(a)(2.5)(B) "with intent to obtain a benefit or to injure or defraud another," which is a Class A misdemeanor. 720 ILCS 5/17-2(a)(2.5)(B), 17-2(f)(3) (West 2014). Defendant also allegedly stated he was a "Special State's Attorney of Cook County" in several email and phone communications to a Chicago alderman.

¶ 4 After charges were imposed, defendant appeared at several hearings seeking to represent himself *pro se* in the criminal matter. Defendant said he was "the State's Attorney General" appointed by courts, and several times said he was "a Cook County Special State's Attorney appointed by the Appellate Court." He asserted in one motion that State's Attorney Anita Alvarez thus had a conflict of interest in prosecuting the case against him. In other motions, he added that he was a "Special Attorney General of Illinois," "Special Sheriff of Cook County," "Special Clerk of the Circuit Court," "Special United States Attorney, Northern District of Illinois," and referred to himself as the "undersigned attorney." He also purported to be representing the people of Illinois and Cook County sheriff. Several judges ultimately ordered defendant to have a behavioral clinical exam.

¶ 5 A fitness hearing followed wherein psychiatrist Dr. Nishad Nadkarni opined that defendant was not fit to stand trial due to his mental illnesses. Dr. Nadkarni diagnosed defendant with a psychotic and delusional disorder of the persecutory and grandiose type in explanation of defendant's representation that was a legally trained lawyer. Defendant, who rambled and refused to speak during his interview with Dr. Nadkarni, was deluded in thinking he was a State's Attorney and in thinking his case had been dismissed. Dr. Nadkarni based his opinion on defendant's previous psychiatric reports, police reports, and voluminous legal filings, also adding that defendant had very little insight into his mental illness, which would preclude him from

assisting his lawyer. Dr. Nadkarni testified that defendant previously had a similar delusion of being a State's Attorney and was declared unfit to stand trial in another case. Defendant was restored to fitness when he took medications. Dr. Nadkarni similarly believed that with psychotropic medication there was a substantial probability that defendant could be restored to fitness within a year.

¶ 6 Defendant, represented by a Public Defender, testified on his own behalf. While he displayed knowledge of the proceeding and how the legal system works, he denied he suffered a mental illness. He insisted the appellate court had appointed him as a special State's Attorney and special Attorney General, and he was in fact representing the "People of the State of Illinois" in an appeal. Defendant, however, also acknowledged that position is held by a lawyer and that he had not attended law school or received a degree or license. Defendant stated on cross-examination that if he were appointed an attorney he would assist by telling her "how I became the Special Sheriff of Cook County, show her the court order" and "therefore attempt to have her represent the fact that I am not impersonating myself as a police officer, I am in fact the court-appointed Special Sheriff of Cook County."

¶ 7 The trial court noted defendant understood the legal system on a rather sophisticated level but his very testimony demonstrated he was delusional and unfit to understand the charges against him and interact with the community at large. See 725 ILCS 5/104-10, 104-16 (West 2014). The court held defendant had a substantial probability to be restored within a year while remaining in a Department of Human Services (DHS) facility.

¶ 8 ANALYSIS

¶ 9 Defendant, through the Public Defender, first contends we may review this case even though he has since been released from the mental institution and declared fit to stand trial. The

State has responded arguing those circumstances render the present appeal moot. Generally, Illinois courts do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided. *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). Defendant, however, argues this case is capable of repetition and subjects him to collateral consequences, two exceptions to the mootness doctrine. We disagree and also note defendant has not filed a response brief to the State's contrary arguments.

¶ 10 Generally, a party resisting a finding of mootness has the burden to show an exception applies. *People v. Madison*, 2014 IL App (1st) 131950, ¶ 12. Defendant cannot meet the second requirement for the capable-of-repetition exception, which is that "the same complaining party would be subjected to the same action again."[1] *Id.*, quoting *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998). Defendant argues that because he was previously found unfit for similar reasons, the present finding of unfitness will likely recur. We note initially that finding defendant unfit to stand trial does not entail the same kind of determination as a finding that a person is mentally ill and a danger to himself or others. *People v. Holt*, 2014 IL 116989, ¶ 46. Fitness speaks only to a person's ability to function within the context of a trial; it does not refer to sanity or competence in other areas. *Id.* Moreover, fitness must be judged based on the totality of the circumstances on a case-by-case basis. *People v. Stahl*, 2014 IL 115804, ¶ 26. Defendant's first claim on appeal is that the trial court's determination was against the manifest weight of the evidence, meaning that the opposite conclusion is apparent or that the finding is unreasonable, arbitrary or not grounded on the evidence. *In re C.S.*, 383 Ill. App. 3d 449, 451 (2008). This is a fact-specific challenge to evidence at the fitness hearing and conclusions that resulted. However, in cases where the defendant challenges the specific facts from the hearing, the capable-of-

[1] The State concedes the first requirement for the capable-of-repetition exception, that the challenged action was of too short a duration to be fully litigated.

repetition exception to mootness generally does not apply because facts in any future hearing would necessarily be different and have no bearing on similar issues presented in subsequent cases. *People v. McCoy*, 2014 IL App (2d) 130632, ¶ 13; see also *Alfred H.H.*, 233 Ill. 2d at 360. Courts do not review cases merely to set precedent or guide future litigation. *Alfred H.H.*, 233 Ill. 2d at 360.

¶ 11 We similarly reject defendant's argument that the collateral consequences exception applies here. Application of the exception, which is decided on a case-by-case basis, cannot rest solely on a vague, unsupported statement that collateral consequences might plague respondent in the future. *In Rita P.*, 2014 IL 115798, ¶¶ 31, 34. Yet, that's just what defendant has argued. He generally argues the unfitness finding could "plague" him in future proceedings or affect other areas of his life. In a somewhat circular fashion, he argues the present finding already has "plagued" him because he was committed to DHS. The record shows that defendant has a history of mental illness and of filing frivolous matters *pro se* before the courts. He has even garnered an order from the appellate court threatening sanctions for any further such filings. In addition, the record shows that he has already been held unfit in another case for similar reasons and also ordered to take medication, after impersonating an attorney. Given defendant's history, we do not believe the determination that he was unfit again and in need of medications create collateral consequences that do not already exist. See *Alfred H.H.*, 233 Ill. 2d at 362-63 (where respondent previously had *multiple* involuntary commitments and had been imprisoned on murder conviction, collateral consequence exception did not apply to a moot involuntary commitment order). His argument that the unfitness finding could affect him in future proceedings is too speculative to bring this case within the collateral consequences exception. See *Madison*, 2014 IL App (1st) 131950, ¶ 18.

¶ 12 Defendant's challenge to the unfitness finding is moot and does not fit within a cited exception to the mootness doctrine. We nonetheless address the statutory issue raised by defendant regarding jury waiver in fitness hearings to the extent this may questionably be capable of repetition. See *Alfred H.H.*, 233 Ill. 2d at 359-60 (there must be a substantial likelihood that the issue presented in the instant case, and any resolution thereof, would have some bearing on a similar issue presented in a subsequent case); *McCoy*, 2014 IL App (2d) 130632, ¶ 13 ("[W]when the defendant raises a purely legal question, such as an issue of statutory interpretation, the exception can apply because the court will likely again commit the same alleged errors.").

¶ 13 Defendant argues that a jury waiver in a fitness hearing must be knowingly and understandingly made on the record. Because the record is silent on the issue, defendant argues for reversal. Defendant insists that we may review this unpreserved error as plain error. Where, as here, there is no error, there can be no plain error. *People v. Bannister*, 232 Ill. 2d 52, 65, 71 (2008). We reject defendant's argument for several reasons. First, defendant relies chiefly on criminal cases involving the constitutional right to a jury trial, but a fitness hearing is a preliminary civil proceeding separately conducted to determine an accused's competency to stand trial. *People v. Williams*, 205 Ill. App. 3d 715, 721 (1990). Its sole purpose is to determine if the defendant can understand the nature of the proceedings and participate in his own defense at trial. *Id.* Second, the plain language of the statute affords defendant a right to demand a jury trial but does not require an on-the-record waiver. See *People v. Miraglia*, 2013 IL App (1st) 120286, ¶ 22 (there is no constitutional right to a jury determination of a defendant's fitness to stand trial). It states:

> "The issue of the defendant's fitness may be determined in the first instance by the court or by a jury. The defense or the State may demand a jury or the court on its own motion may order a jury. However, when the issue is raised after trial has begun or after conviction but before sentencing, or when the issue is to be redetermined under Section 104-20 or 104-27, the issue shall be determined by the court." 725 ILCS 5/104-12 (West 2014).

¶ 14 The fitness statute is permissive and places the affirmative onus of demanding a jury on the parties, including defendant and his counsel. See *People v. Ousley*, 235 Ill. 2d 299, 313-14 (2009); *People v. Shanklin*, 26 Ill. App. 3d 167, 170 (1975); *People v. Welsh*, 30 Ill. App. 3d 887, 889-90 (1975). Under its plain language, it does not require an on-the-record waiver, unlike the jury waiver provisions for a criminal trial. *Cf.* 725 ILCS 5/103-6 (West 2014) ("Every person accused of an offense shall have the right to a trial by jury unless (i) understandingly waived by defendant in open court ***."); *People v. Evans*, 243 Ill. App. 3d 72, 82 (1993) (noting, "[s]ection 103-6 still requires an *affirmative* indication by the defendant or defense counsel which unambiguously manifests a knowing and intelligent waiver of the right to a jury trial"); see also 725 ILCS 5/115-1 (West 2014) ("All prosecutions except on a plea of guilty or guilty but mentally ill shall be tried by the court and a jury unless the defendant waives a jury trial in writing."); *People v. Studdard*, 51 Ill. 2d 190, 197 (1972) (under Sexually Dangerous Persons Act, defendant is required to assert the right to a jury by demand, as in a civil case). Defendant has not cited any case law or persuasive authority that a silent record on this issue in a civil fitness hearing is the equivalent of error, let alone plain error. Defendant's contention fails.

¶ 15 CONCLUSION

¶ 16 For the reasons stated, defendant's first issue challenging the fitness finding is moot. We affirm the trial court's decision in all other respects.

¶ 17 Affirmed.