2017 IL App (1st) 151250-U

No. 1-15-1250

Order filed November 8, 2017

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 5111
	)	
ARTAVIS JOHNSON,	)	Honorable
	)	Erica L. Reddick,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Defendant's convictions for aggravated vehicular hijacking with a firearm and armed robbery with a firearm affirmed where counsel's failure to inquire into defendant's mental health or request a behavioral clinical exam was not ineffective assistance, and the trial court's inquiry into defendant's *pro se* posttrial claim of ineffective assistance of counsel was adequate.

¶ 2 Following a bench trial, defendant Artavis Johnson was convicted of aggravated vehicular hijacking with a firearm and armed robbery with a firearm. The trial court sentenced defendant to concurrent terms of 30 years' imprisonment, which included 15-year sentencing

enhancements for being armed with a firearm while committing both offenses. On appeal, defendant contends that his trial counsel rendered ineffective assistance because she failed to inquire into his mental health or request a behavioral clinical examination (BCX). Defendant also contends that the trial court failed to conduct an adequate inquiry into his *pro se* posttrial claim of ineffective assistance of counsel because the court did not question counsel. We affirm.

¶ 3 Defendant does not challenge his convictions or sentences, and thus, a limited discussion of the facts of this case is sufficient. The evidence at trial established that shortly after midnight on February 21, 2013, defendant approached Serratta Tate as she parked her vehicle outside her residence. Defendant opened Tate's driver's door, pulled her out of the vehicle, and pressed a gun against her right temple. He took her car keys, purse and necklace, and threatened to kill her. Defendant drove away in Tate's red Chevrolet Equinox.

¶ 4 Minutes later, Ericka Gordon was parking her vehicle in front of her relative's house when defendant pulled up in Tate's vehicle and blocked Gordon's car. Defendant pressed a gun against Gordon's waist and demanded money. She told him that she did not have any money and offered him her car keys. Defendant declined. He asked Gordon what she was doing, and she replied that she was picking up her son. Defendant conversed with Gordon about their children for 15 minutes. He then put the gun in his pocket, apologized, and attempted to shake her hand. Gordon refused to shake his hand, told him to leave, and defendant drove away in Tate's vehicle.

¶ 5 Using the On-Star system, police located Tate's vehicle a half-hour after the hijacking. Defendant was standing next to the driver's door. Police detained defendant and recovered the keys for the vehicle from his pocket. Defendant told police that he was going to his girlfriend's

house and pointed at a house. Police went to the house and recovered Tate's necklace from defendant's girlfriend.

¶ 6 Defendant gave a statement to an assistant State's Attorney admitting that he pointed a gun at a woman and demanded her purse and car keys. After she relinquished those items to him, he realized she was his mother's age, apologized, and asked her to drive him home. She refused and he drove away in her vehicle. Defendant stated that he saw another woman standing alone, pointed the gun at her and demanded money. When she began speaking about her son, he apologized, tried to shake her hand, and drove away. He threw the gun into Douglas Park.

¶ 7 Defendant's two-day trial was held on June 30 and July 1, 2014. Upon adjourning on June 30, defense counsel stated "Judge, I request the defendant receive medical treatment from Cook County Jail." The trial court replied "[y]es. You don't have to publish the rest of it." Nothing further was stated on the record. The common law record contains an order entered by the court on June 30 which states "[t]he above named defendant shall receive medical treatment from Cook County Jail for suicidal thoughts he is reportedly having today."

¶ 8 After the trial on July 1, defense counsel informed the court that defendant was not seen by medical personnel the previous day and requested another court order. Counsel stated "I would be asking that he be sent to Cermak given the remarks that were made yesterday, the ruling of today's court proceeding. I feel more comfortable if he were seen with Cermak. If they don't determine they need to keep him there, they can release him to a division." The trial court stated that it was "troubling to the court that he was not seen yesterday." The court then told defendant "I am signing an order for you to be evaluated based on the statements that your lawyer indicated that you made in court that – not in court, but to her specifically that are

concerning." The July 1 order states "The above named defendant shall receive immediate mental health treatment due to suicidial [*sic*] threats made to family members in open court on 6/30/14."

¶ 9 At sentencing eight months later, defendant's sister, Rosheda Johnson, testified that some men had "jumped" defendant in an alley and left him for dead. Defendant suffered a brain injury from that incident. He was then diagnosed with depression and was taking Zoloft and Trazadone. He had stopped taking the medication and was not taking it at the time of the offenses in this case. Johnson did not state when defendant was attacked, and there was no further evidence presented regarding his brain injury or depression.

¶ 10 While awaiting sentencing in jail, defendant wrote a letter to Tate apologizing for "putting a gun to you that night." Defendant asked Tate to tell the court that she did not want him to do any extra time for the offense. Defendant also wrote a letter to Tate's son, claiming that there had been a shootout and that he came across Tate as he was trying to get home. Defendant said he asked Tate for a ride home, and she told him to take her car. Defendant asked Tate's son to talk to his mother about coming to court so defendant could receive a lower sentence.

¶ 11 The State argued that defendant's letters showed that he would say whatever he needed to say to try to receive a lower sentence. Defense counsel argued that defendant's letters and stories were "disjointed" because he suffered from mental illness following a head injury, but that his remorse was authentic.

¶ 12 During his allocution, defendant stated that defense counsel did not ask him anything and wanted him to "cop out" from the beginning. Defendant stated that he had submitted motions and tried to talk to the court, but the court advised him to talk to counsel. He said that counsel met

with him to review the discovery only once for five minutes, then said she had something else to do. Defendant also stated that counsel never came to see him and never reviewed any discovery with him, and he "wrote her up constantly."

¶ 13 Defendant then stated "I admit I did what I did," and that he had apologized to Tate for putting a gun to her. He said he merely wanted Tate to give him a ride home, but she was frightened and told him to take her truck. Defense counsel interjected that what defendant said was consistent with the testimony at trial. Defendant then stated:

> "Yeah, I know, but I put in motions so they won't bring up my background and all that to Dorothy Brown. She never came and talked to me or none of that. I feel I didn't get a fair trial. She allowed them to bring my oral statement that I never wrote. She allowed them to bring up background when I never got on the stand. She allowed them to do everything. She didn't object to nothin'. And she supposed to be my lawyer."

¶ 14 Counsel pointed out that a proof of other crimes motion had been heard. Defendant then continued:

> "I put in a motion for termination. I never got it. I had a motion right here. Motion for termination of PD right here. (Indicating to document.) Then I had put in another motion – two more motions. I put them all in and I got them documented from the library and everything. This is another motion, Motion in Limine, so they won't bring up my background. Another motion, Motion To Bar the Use of Evidence of Prior Convicted to Impede Credibility of Defendant. I put all those in there. She never came to me. She always tell me she come talk to me. She didn't do none of that. I feel I didn't deserve a fair trial. When she did come see me, her and another PD, they came to see me for about

> 5 minutes and she said she had to go somewhere. She came at 2:30 and she was gone like at 2:45 because the shift was changing."

¶ 15 The trial court responded that it found "no fault in the efforts of your attorney who is trained and licensed and who did represent you before the court." The court explained to defendant that certain fundamental rights belong to him, including whether to testify, whether to plead guilty or not guilty, and what type of trial he wants. However, decisions regarding strategy, which witnesses to call and which motions to file belong to counsel. The court stated:

> "given what you have said and considering what was brought before the court in your behalf as far as your attorney representation, again I don't find that any of the claims that you make at this point amount to what was an unfair trial for you or that you did not receive the assistance as required by the law in your legal counsel."

¶ 16 On appeal, defendant first contends that his trial counsel rendered ineffective assistance because she failed to inquire into his mental health or request a behavioral clinical examination (BCX). He claims counsel should have done so because she had access to his history of clinical depression linked to a traumatic brain injury and use of psychotropic medication, and he threatened to harm himself in court on the morning of trial.

¶ 17 The State responds that counsel did not render ineffective assistance because there was no *bona fide* doubt of defendant's fitness. It argues that defendant was fully aware of the court proceedings and actively attempted to aid in his own defense, even writing his own motions. The State points out that the record contains no information about the suicidal threats, when the brain injury occurred, the seriousness of that injury, or when counsel learned of it.

¶ 18 Claims of ineffective assistance of counsel are evaluated under the two-prong test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Graham*, 206 Ill. 2d 465, 476 (2003). To support a claim of ineffective assistance of counsel, defendant must demonstrate that counsel's representation was deficient, and as a result, he suffered prejudice. *Strickland*, 466 U.S. at 687. Specifically, defendant must show that counsel's performance was objectively unreasonable, and that there is a reasonable probability that the outcome of the proceeding would have been different if not for counsel's error. *People v. Henderson*, 2013 IL 114040, ¶ 11. If defendant cannot prove that he suffered prejudice, this court need not determine whether counsel's performance was deficient. *Graham*, 206 Ill. 2d at 476.

¶ 19 A defendant is presumed to be fit to stand trial. 725 ILCS 5/104-10 (West 2012). Defendant is unfit when he is unable to understand the nature and purpose of the court proceedings or cannot assist with his defense due to his mental or physical condition. 725 ILCS 5/104-10 (West 2012); *People v. Haynes*, 174 Ill. 2d 204, 226 (1996). Fitness refers only to defendant's ability to function within the context of a trial. *Id.* "A defendant may be competent to participate at trial even though his mind is otherwise unsound." *People v. Eddmonds*, 143 Ill. 2d 501, 519 (1991).

¶ 20 A defendant is entitled to a fitness hearing only when a *bona fide* doubt of his fitness to stand trial has been raised. *Id.* at 512. Therefore, to show that counsel's failure to request a BCX prejudiced him, defendant must establish that facts existed at the time of trial that raised a *bona fide* doubt of his ability to understand the nature and purpose of the proceedings and to assist in his defense. *People v. Easley*, 192 Ill. 2d 307, 318-19 (2000).

¶ 21 Factors the trial court may consider when assessing whether a *bona fide* doubt of fitness exists include defendant's irrational behavior, his demeanor in court, and any prior medical opinion on his competence to stand trial. *Eddmonds*, 143 Ill. 2d at 518. Our supreme court has stated "[i]t is undisputed, however, that there are 'no fixed or immutable signs which 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.' " *Id.* (quoting *Drope v. Missouri*, 420 U.S. 162, 180 (1975)). The fact that defendant suffers from a mental illness does not necessarily raise a *bona fide* doubt of his ability to assist counsel. *Id.* at 519. Similarly, the taking of psychotropic medication does not require a finding of a *bona fide* doubt of fitness. *People v. Mitchell*, 189 Ill. 2d 312, 330-31 (2000). Our supreme court has also held that a history of suicide attempts does not, by itself, demonstrate that a defendant is unfit. *People v. Sanchez*, 169 Ill. 2d 472, 483 (1996).

¶ 22 Here, nothing in the record indicates that a *bona fide* doubt of defendant's fitness existed. The record contains no information about defendant's suicidal threats. We do not know what defendant said or to whom he said it. It appears that he expressed these thoughts only on the first day of trial. There is no indication that he made any similar statements prior to that day.

¶ 23 Nor is there any indication in the record that defendant demonstrated any other type of irrational behavior, depression, or mental illness that would have raised a concern regarding his fitness. There is no evidence that he experienced any outbursts or questionable behavior in court. There is no indication that he appeared confused about the proceedings, or that counsel experienced any difficultly when communicating with him.

¶ 24 The only information regarding defendant's brain injury, depression and prior use of psychotropic medication came from his sister's testimony during sentencing. The information she revealed was very general, vague, and not supported by any other evidence. There is no information regarding when the brain injury occurred, the seriousness of that injury, or when counsel learned of it. There is no information about when defendant suffered from depression and took the medications. His sister testified that defendant had stopped taking the medications and was not taking them at the time of the offenses in this case. Although defendant previously suffered a brain injury and depression, there is no indication that these conditions had any effect on his ability to understand the proceedings in this case, or to assist with his defense.

¶ 25 Furthermore, the record clearly shows that defendant understood the nature and purpose of the proceedings, and attempted to assist in his defense. Immediately before trial began, the court thoroughly advised defendant of his rights including his right to plead guilty or not guilty, his right to a jury trial, and his right to decide whether or not to testify. Defendant stated that he understood all of the court's admonishments. Defendant also confirmed that he had an opportunity to discuss his case with defense counsel in preparation for beginning his trial that day. As the venire was about to enter the courtroom for jury selection, defendant asked to speak with the court regarding they type of trial he was choosing. The court explained that defendant had a right to choose either a jury or bench trial, and explained the jury trial process. Defendant stated that he understood, and after further admonishments, waived his right to a jury trial. On the second day of trial, before the defense rested, the court admonished defendant of his right to testify, and he indicated that he understood his right and chose not to testify. These exchanges between defendant and the trial court demonstrate that defendant understood the nature and

purpose of the proceedings, and assisted in making decisions regarding his defense. See *People v. Harris*, 206 Ill. 2d 293, 305 (2002).

¶ 26 Based on this record, we find that no *bona fide* doubt of defendant's fitness existed. Accordingly, counsel's failure to request a BCX did not constitute ineffective assistance.

¶ 27 Defendant next contends that the trial court failed to conduct an adequate inquiry into his *pro se* posttrial claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). Defendant argues that his claims concerned counsel's actions outside the courtroom, and therefore, the court was required to question counsel regarding the facts and circumstances related to her representation. He argues that because the court relied on its own knowledge of counsel's performance and did not pose any questions to counsel, its inquiry was insufficient.

¶ 28 Where defendant raises a *pro se* posttrial claim that trial counsel rendered ineffective assistance, the trial court should examine the factual basis of the claim to determine if it has any merit. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). The court can evaluate defendant's *pro se* claim by either discussing the allegations with defendant and asking for more specific details, questioning trial counsel regarding the facts and circumstances surrounding defendant's allegations, or relying on its own knowledge of counsel's performance at trial and determining whether the allegations are facially insufficient. *Id*. at 78-79. If the court finds that the claims reveal possible neglect of the case, then it should appoint new counsel to represent defendant at a hearing on his *pro se* motion. *Id*. at 78. However, if the trial court finds that defendant's allegations are without merit or pertain only to matters of trial strategy, new counsel should not be appointed and the court may deny the *pro se* motion without further inquiry. *Id.*

¶ 29 On review, the appellate court's primary concern is whether the trial court conducted an adequate inquiry into defendant's *pro se* claims of ineffective assistance of counsel. *Id.* Where, as in this case, the trial court reached a decision on the merits of defendant's ineffective assistance of counsel claim, that ruling will not be disturbed on review unless it was manifestly erroneous. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25. "Manifest error" is error which is clearly plain, evident and indisputable. *Id.*

¶ 30 In this case, we find that the trial court's inquiry into defendant's *pro se* claim of ineffective assistance of counsel was adequate, and its determination that his claim was without merit was not manifestly erroneous. Defendant raised his claims about counsel's representation during his allocution at sentencing. The record shows that the trial court allowed defendant to thoroughly argue his claims regarding counsel's ineffectiveness. Defendant repeatedly said that counsel never came to see him. However, he then said counsel came to see him for 5 minutes, and moments later, said she visited him for 15 minutes, contradicting his own claim. Defendant claimed that counsel wanted him to "cop out" from the beginning. The record shows, however, that before trial began, both the State and defense counsel informed the court that no plea offers had been made.

¶ 31 Defendant also complained that counsel allowed the State to bring up his background even though he did not testify. He argued that he had motions he wanted to file to preclude the State from admitting his prior convictions. Counsel then interjected that the State had filed a pretrial motion to admit proof of other crimes, namely, his attempted armed robbery of Gordon, and the trial court granted that motion. Contrary to defendant's claims, his prior criminal history was not raised during trial.

¶ 32 After allowing defendant to speak at length, the trial court found that his claims were without merit. The court explained to defendant that although certain fundamental rights rest in his decision, other decisions, such as which motions to file, are matters regarding trial strategy that belong to counsel. The court concluded that based on its observations and knowledge of counsel's representation of defendant, his claims were without merit.

¶ 33 The record thus shows that the trial court relied on its own knowledge of counsel's performance at trial and determined that defendant's allegations were facially insufficient. Based on the court's finding that defendant's allegations were without merit or pertained to matters of trial strategy, the court had the authority to deny the *pro se* motion without further inquiry. We find that the trial court's ruling was not manifestly erroneous, and that its inquiry into defendant's claims was sufficient.

¶ 34 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.