2017 IL App (4th) 140838-U

NO. 4-14-0838

FILED
January 13, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
RANDY M. COOK,	)	No. 13CF455
Defendant-Appellant.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: (1) There was no *bona fide* doubt of defendant's fitness, and therefore, the trial court did not err by not *sua sponte* ordering a fitness evaluation.

¶ 2 (2) Defendant's counsel was not ineffective for failing to request a fitness hearing, precluding a claim of ineffective assistance of counsel, as the record contradicts any indication defendant was unfit.

¶ 3 (3) The fines improperly imposed by the circuit clerk for lack of authority are vacated without remand, as this court lacks authority to order the trial court to impose the vacated fines.

¶ 4 In June 2013, defendant, Randy M. Cook, pleaded guilty to burglary. Throughout the proceedings, the trial court had appointed three different attorneys to represent defendant. Eventually, the court allowed defendant, at his request, to proceed *pro se*, but the court denied defendant's motion to withdraw his guilty plea. Defendant appeals, claiming the court should have *sua sponte* ordered a fitness evaluation after a *bona fide* doubt of defendant's fitness was

raised. Defendant also raises issues with various fines imposed. For the following reasons, we affirm the court's dismissal of defendant's motion to withdraw his guilty plea, finding no *bona fide* doubt of defendant's fitness. We vacate the fines improperly imposed by the circuit clerk and the deoxyribonucleic acid (DNA) fee as duplicative.

¶ 5 I. BACKGROUND

¶ 6 In March 2013, the State charged defendant with one count of burglary, a Class 2 felony (720 ILCS 5/19-1(a) (West 2012)), and one count of retail theft over $300, a Class 3 felony (720 ILCS 5/16-25(a)(1) (West 2012)) for stealing a computer from Walmart with his co-defendant, Michelle Burns. At defendant's arraignment, defendant indicated he understood the nature of the charges against him and that he was eligible for extended-term sentencing based upon his criminal history. The trial court appointed the public defender to represent defendant.

¶ 7 Despite the appointment of counsel, defendant filed a *pro se* motion entitled "Motion to Suppress and Dismiss Charges and Evidence," alleging, *inter alia*, he was "illegally seized from court" and arrested on the current charges when he appeared in court on an unrelated traffic offense. He claimed the circumstances surrounding his arrest and the charges filed violated various other constitutional rights. He also filed a *pro se* motion for a speedy trial. At the next hearing, assistant public defender, Stephanie Corum, appeared on defendant's behalf.

¶ 8 Defendant's jury trial began on June 18, 2013. Corum represented defendant. Prior to the start of the trial, the trial court again arraigned defendant, this time in the presence of counsel and only as to count I (burglary), as the State dismissed count II. Defendant indicated he understood the charge and the potential range of punishment as a Class X offender due to his prior criminal history.

¶ 9 The State's evidence began with the testimony of Jeffrey Myers, the asset protection manager for Walmart. He said on January 28, 2013, he saw a female, Michelle Burns, attempting to exit the store with what appeared to be a computer box in her shopping cart with the security wire still wrapped around the box. He approached and asked Burns for a receipt. She said she did not have a receipt and pointed to defendant, as if he had it. Burns began following Myers back into the store. As Myers was leading them to the asset protection office, both defendant and Burns ran from the store. Myers called the police. The State played for the jury the video from the surveillance cameras at Walmart showing the incident as described by Myers.

¶ 10 Next, Burns testified. She indicated she was not testifying willingly—she had been subpoenaed to do so. She had already pleaded guilty to theft related to this incident. Burns explained that she and defendant had an agreement for her to steal a computer in exchange for money or drugs. Defendant accompanied her to the store and told her which computer to steal. Burns identified herself and defendant on the video surveillance.

¶ 11 Finally, Nathan Hills, an Urbana police officer, testified he spoke with defendant about the incident. Defendant told him he happened to run into Burns at Walmart. He saw her with a computer in her shopping cart with the security wires still attached. They were leaving the store at the same time when security stopped them at the door. Defendant told him after Burns left, he left, too.

¶ 12 At the conclusion of this testimony, the State rested and the trial court ordered an overnight recess. The next day, defendant advised the trial judge he wished to "fire Ms. Corum" because (1) favorable evidence was not presented to the jury, (2) the State had "tainted [the video] evidence," and (3) he was not aware the potential range of punishment was 6 to 30 years in prison. The court heard from Corum in opposition to defendant's claims. Thereafter, the court

denied defendant's motion, finding the motion "isn't even close to being timely made, sir. Jeopardy has attached. The trial is underway and we are going to move forward." The prosecutor advised the court on the record that an offer of 20 years was made and rejected prior to the overnight recess. Corum moved for a continuance to investigate two witnesses defendant indicated he wished to have testify on his behalf. The court denied the continuance. The court admonished defendant regarding his right to testify. The court ordered a short recess to allow defendant and Corum to discuss whether defendant would testify.

¶ 13 When court resumed, the parties informed the trial court they had reached a plea agreement. The court admonished defendant about the burglary charge and potential penalties in accordance with Illinois Supreme Court Rule 402(a) (eff. July 1, 2012). In exchange for his guilty plea, the State would recommend a sentence of 16 years in prison. Defendant stated he understood the admonishments and still wished to plead guilty. The court accepted defendant's guilty plea and sentenced defendant as agreed to by the parties pursuant to the plea agreement.

¶ 14 On June 26, 2013, defendant filed a *pro se* motion, alleging his counsel was ineffective for some of the same grounds he had raised in open court. Defendant's allegations centered on discovery and evidentiary issues. For example, defendant alleged Corum assisted the State in "building a case against" him by removing a "vague photo and revis[ing] police reports to support everything the prosecutor said, against defendant." Defendant also claimed he was misled into entering the plea agreement. He said Corum told him he did not "stand a chance in hell."

¶ 15 Defendant also filed a *pro se* motion to withdraw his guilty plea, alleging similar grounds as his motion for ineffective assistance of counsel. He insisted his plea was not entered knowingly or voluntarily.

¶ 16 On July 24, 2013, defendant requested the appointment of counsel to assist with his postplea motions. The trial court granted defendant's motion and appointed the office of the public defender. Assistant public defender Lindsey Yanchus was assigned to defendant's case. Yanchus filed an amended motion to withdraw the guilty plea.

¶ 17 Again, despite being represented, on September 11, 2013, defendant filed a *pro se* motion for change of venue. In this motion, defendant alleged he had asked Yanchus "to put in amended motion about his mental state to be added as grounds. Defendant was on psychiatric medication which is a drug called Trazidone. Defendant's mental capacity was impaired and was unable to rationalize make decision when he was also given unreasonable advice."

¶ 18 On September 18, 2013, the parties convened for a hearing on what was supposed to be a hearing on defendant's amended motion to withdraw his guilty plea. However, due to his *pro se* filing, the trial court rescheduled the matter so counsel would have a chance to review defendant's motion and file whatever pleadings she deemed necessary. The court admonished defendant he could not proceed *pro se* and with counsel at the same time, and that the court would consider only pleadings filed by counsel.

¶ 19 Nevertheless, on September 26, 2013, defendant filed a *pro se* amended motion to withdraw his guilty plea. He also filed a request to proceed *pro se* and asked that the amended motion to withdraw his guilty plea prepared and filed by Yanchus be disregarded. As a result, Yanchus filed a motion to vacate the appointment of the public defender's office. Defendant filed several other *pro se* motions pertaining to discovery, change of venue, and claims of ineffective assistance of counsel of Corum and Yanchus.

¶ 20 On October 21, 2013, at a scheduled hearing, the trial court first considered defendant's request to proceed *pro se*. The court thoroughly admonished defendant about the

consequences of proceeding *pro se*. Defendant indicated he understood all of the admonishments. However, when the court offered the appointment of an attorney outside of the public defender's office, defendant accepted and indicated he *would* like appointment of counsel. The court appointed Edwin Piraino and granted leave to file whatever motions Piraino deemed necessary.

¶ 21 On March 17, 2014, before Piraino filed an amended postplea motion, defendant filed several *pro se* motions, including a request for the withdrawal of counsel. However, on April 25, 2014, Piraino filed a motion to withdraw defendant's guilty plea. In that motion, counsel alleged defendant "did not fully understand his plea agreement as he suffers from a psychiatric medical condition which causes him to hear voices in his head and that such an episode occurred during his plea agreement discussion with counsel, confusing him." On May 12, 2014, defendant filed an 11-page *pro se* amended motion to withdraw his guilty plea.

¶ 22 On May 16, 2014, the trial court conducted a *Krankel* hearing (see *People v. Krankel*, 102 Ill. 2d 181 (1984)) on defendant's request for counsel to withdraw. The court again admonished defendant regarding the consequences of proceeding *pro se*. The court asked for Piraino's opinion on whether he felt he and defendant had reached an impasse. Piraino stated: "Your Honor, I believe that's correct. I've attempted on two occasions and I can't get to the second sentence and we have a disagreement, even as to the range of sentencing." After discussing the matter with defendant in open court, the court found defendant's election to proceed *pro se* was knowing and voluntary. The court terminated the appointment of Piraino.

¶ 23 The trial court immediately proceeded to consider defendant's May 12, 2014, *pro se* amended motion to withdraw his guilty plea. At the State's request, the court allowed the State time to file a written motion to strike defendant's motion. On May 20, 2014, the State filed its

written motion to strike, claiming the allegations in defendant's motion provided no legal basis to support the withdrawal of his guilty plea. Defendant filed a lengthy response.

¶ 24 On June 23, 2014, the trial court conducted a hearing on the State's motion to strike. After considering the arguments of counsel, the court took the matter under advisement. On June 26, 2014, defendant filed a *pro se* "Motion on Ineffective Assistance of Counsel."

¶ 25 On July 14, 2014, the trial court entered a docket entry denying the State's motion to strike and ordering an evidentiary hearing on defendant's *pro se* amended motion to withdraw his guilty plea. The court scheduled the matter for a hearing in August 2014. Due to various discovery issues, the matter was rescheduled for September 25, 2014.

¶ 26 On that day, the parties convened for the evidentiary hearing. For his case in chief, defendant presented the court with exhibits, he claimed tended to demonstrate the Walmart surveillance video had been edited, "contaminated," or tampered with to make it appear it was defendant committing the crime.

¶ 27 The State presented the testimony of Scott Larson, the assistant State's Attorney who prosecuted defendant. Larson testified he had forwarded all the evidence he received from Walmart and the police to Corum prior to trial as part of discovery. All evidence tendered to Corum and ultimately presented at trial was in its original form and had not been altered. Larson also testified as to defendant's certified convictions, gathered from a LEADS search, which were used to elevate defendant's eligibility to Class X offender status for sentencing purposes. Defendant conducted reasonable cross-examination of Larson.

¶ 28 The State also presented the testimony of Corum. She testified she had viewed the surveillance video upon receiving it from Larson. She said the same video was shown to the jury during the trial. According to Corum, defendant had indicated on the second day of the trial that

he suspected the video had been altered. She testified about her conversations with defendant regarding the State's plea offer. She said she did not pressure him in any way to accept the offer. She admitted telling defendant the State had a strong case against him, but she told him she was ready to finish the trial. However, defendant indicated he wanted to accept the negotiated plea offer. Corum said prior to trial, she had discussed with defendant that he was to be sentenced as a Class X offender on his Class 2 felony charge. She went over the LEADS report with him, pointing out his prior convictions and explaining to him his eligibility for Class X sentencing. Defendant cross-examined Corum as well.

¶ 29 After considering the arguments of defendant and counsel, the trial court denied defendant's motion to withdraw his guilty plea. The court then reiterated at length a summary of the trial court proceedings, the admonishments defendant received throughout those proceedings, and defendant's response to those admonishments—all of which indicated he understood the nature of the proceedings and the court's admonishments. The court found no evidence to support defendant's claim the surveillance video had been edited or altered.

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 A. Fitness To Stand Trial

¶ 33 Defendant contends there was a *bona fide* doubt as to his fitness at the time he was allowed to proceed *pro se* and the trial court should have *sua sponte* ordered a fitness evaluation. We disagree.

¶ 34 Initially, we note defendant acknowledges he failed to preserve this issue for our review. However, he claims, and we agree, the issue may be reviewed for plain error. See *People v. Gipson*, 2015 IL App (1st) 122451, ¶ 28 (stating a defendant's fitness for trial involves a

fundamental right and "alleged errors concerning fitness may be reviewed under the plain error doctrine"); see also *People v. Shaw*, 2015 IL App (4th) 140106, ¶ 23. "The due process clause of the fourteenth amendment bars prosecution of a defendant unfit to stand trial." *People v. Holt*, 2014 IL 116989, ¶ 51. A defendant is unfit to stand trial if a mental or physical condition prevents him from understanding the nature and purpose of the proceedings against him or assisting in his defense. 725 ILCS 5/104-10 (West 2012).

¶ 35 Although any party may raise the issue of a defendant's fitness at an appropriate time, whenever a *bona fide* doubt of the defendant's fitness arises, the trial court must *sua sponte* order a determination of the defendant's fitness before proceeding further. *People v. Tapscott*, 386 Ill. App. 3d 1064, 1075 (2008). Whether a *bona fide* doubt of the defendant's fitness exists is a matter within the trial court's discretion. *Tapscott*, 386 Ill. App. 3d at 1075. Where no fitness hearing was held, we will reverse and remand for a new trial only where the court abused its discretion in failing to act on a *bona fide* doubt of the defendant's fitness. *People v. Sandham*, 174 Ill. 2d 379, 389-91 (1996).

¶ 36 However, we note the trial court is in a superior position to view the defendant's behavior personally and to determine, based on that observation, whether the requisite doubt exists. *Tapscott*, 386 Ill. App. 3d at 1075. "Factors relevant to determining whether a *bona fide* doubt of the defendant's fitness exists include the rationality of the defendant's behavior and demeanor at trial, any prior medical opinions on the defendant's fitness, and defense counsel's representations concerning the defendant's competency." *People v. Nichols*, 2012 IL App (4th) 110519, ¶ 32. A defendant's use of psychotropic medications may indicate unfitness but cannot alone override the presumption that he is fit to stand trial. *Nichols*, 2012 IL App (4th) 110519, ¶ 32.

¶ 37 Defendant points to several instances throughout these proceedings when a *bona fide* doubt of his fitness was raised. In particular, he points to his September 11, 2013, *pro se* motion to change venue in which he included an allegation that he had asked his second appointed counsel Yanchas to include as grounds to withdraw his plea a claim that he was "on psychiatric medication" and, as a result, was impaired and unable to rationalize and make decisions. He also points to Piraino's April 25, 2014, motion to withdraw his guilty plea. In that motion, counsel alleged defendant, at the time of his plea, suffered from a psychiatric condition that caused him to hear voices in his head and "that such an episode occurred during his plea agreement discussion with counsel, confusing him."

¶ 38 The fact that a defendant suffers from mental disturbances or requires psychiatric treatment does not automatically result in a *bona fide* doubt of the defendant's fitness. *People v. Eddmonds*, 143 Ill. 2d 501, 519 (1991). Here, the record does not reveal, and defendant does not provide, any basis that would arguably raise a *bona fide* doubt of his fitness. The two references to defendant's mental disorder in the various pleadings mentioned above, one by defendant himself and one by Piraino, do not support a finding of a *bona fide* doubt. This is especially true when considered in light of the record as a whole.

¶ 39 Our review of the remainder of this voluminous record reveals that defendant's demeanor during the proceedings, though difficult, was rational and appropriate. Throughout the trial court proceedings, defendant was able to adequately, logically, and coherently present his evidence and arguments to the trial court. Having the opportunity to observe defendant's conduct and his demeanor firsthand, the trial court expressed no concerns about defendant's ability to understand the nature of the proceedings. See *People v. Hanson*, 212 Ill. 2d 212, 224 (2004). The fact defendant had three different appointed attorneys throughout the trial court proceedings was

not indicative of his inability to assist in his defense because of a mental condition. Rather, and more likely, it demonstrates defendant's belief, whether reasonable or not, that only he was equipped to present his defense. The record is full of defendant's *pro se* pleadings and arguments that adequately assert claims and responses. It is apparent from the record that defendant adequately understood the nature of the proceedings and was able to form arguments to promote his claims.

¶ 40 We disagree that defendant's claim of the State's tampering with the Walmart surveillance video demonstrates his "delusional ideas and paranoid thoughts." Rather, we find it more likely that defendant pursued this assertion merely as a defense theory—the only theory defendant believed he could successfully argue. He presented this theory in a rational and appropriate manner, raising no legitimate concern about his fitness or mental capacity.

¶ 41 After our review of the record, we find nothing to support an independent finding of a *bona fide* doubt of defendant's fitness. This record definitively illustrates that defendant understood the nature and the purpose of the proceedings and was able to effectively proceed *pro se* while also effectively communicating with the prosecutor and the trial court. Simply put, we will not presume defendant was entitled to a fitness hearing based solely on the fact that he asserted he was being treated by psychotropic medication at the time he entered his plea. See *People v. Rosado*, 2016 IL App (1st) 140826, ¶ 38. We find the trial court did not abuse its discretion in not finding a *bona fide* doubt of defendant's fitness.

¶ 42 Given this finding, defendant's alternative claim that his counsel was ineffective for failing to request a fitness examination fails. We concluded above that the record completely contradicts any question of defendant's fitness, and therefore, any claim of ineffective assistance of counsel for failing to raise the issue of defendant's fitness likewise fails, as defendant would

be unable to demonstrate the two-prong standard set forth in *Strickland*. See *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (A defendant must prove that (1) counsel's performance fell below an objective standard of reasonableness; and (2) absent counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different.).

¶ 43 B. Fines Imposed

¶ 44 Defendant next contends the circuit clerk improperly imposed fines against him. The State concedes this error. The only matter of contention between the parties is whether after we vacate the improperly imposed fines, we should remand the case back to the trial court to impose such fines and award credit against his fines.

¶ 45 " 'Because the imposition of a fine is a judicial act, and the circuit clerk has no authority to levy fines, any fines imposed by the circuit clerk are void from their inception.' " *People v. Wade*, 2016 IL App (3d) 150417, ¶ 10 (quoting *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56); see also *People v. Daily*, 2016 IL App (4th) 150588. We therefore vacate the following fines imposed by the circuit clerk: (1) $50 court finance fee; (2) $10 probation operations fee; (3) $10 State Police Services fee; (4) $10 assessment for State Police Operations fee; (5) $10 Arrestee's Medical Assessment fee; and (6) $10 traffic/criminal surcharge. Further, for the reasons stated in *Wade*, we will not remand the cause for the reimposition of said fines. See *Wade*, 2016 IL App (3d) 150417, ¶ 13.

¶ 46 Finally, defendant contends the trial court improperly assessed a $250 DNA fee when defendant had previously submitted a DNA sample and paid the associated fee. The State also concedes this error. We accept the State's concession and vacate the portion of the trial

court's order directing defendant to submit to DNA testing and pay the $250 DNA lab analysis fee.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we vacate the fines improperly imposed by the circuit clerk as discussed above. We vacate the portion of the trial court's order directing defendant to submit to DNA testing and pay the $250 DNA lab analysis fee. We affirm the trial court's order denying defendant's motion to withdraw his guilty plea. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 49 Affirmed in part and vacated in part.