

2018 IL App (1st) 152122-U
No. 1-15-2122
Order filed January 24, 2018

Third Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CR 15216
)	
LYNN BOYLES,)	Honorable
)	Mauricio Araujo,
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:* The trial court did not err by failing to inquire into defendant's fitness to be sentenced where no *bona fide* doubt of his fitness was raised.
- ¶ 2 Following a jury trial, defendant Lynn Boyles was convicted of delivery of a controlled substance (720 ILCS 570/401(d) (West 2014)), and sentenced to seven years and a six months in prison. On appeal, defendant contends solely that the trial court improperly failed to inquire into

his fitness to be sentenced after his responses at his sentencing hearing raised a *bona fide* doubt regarding his fitness. For the following reasons, we affirm.

¶ 3 Defendant does not challenge the sufficiency of the evidence so we recite only those facts necessary to our disposition. At trial, the evidence established that, on August 1, 2014, a Chicago police officer, as part of a team conducting a surveillance mission, observed defendant give two men, during two separate transactions, unknown items in exchange for money. Enforcement officers of the same team subsequently stopped each man and recovered from each two ziplock baggies with black and green logos containing a total weight of 0.2 grams of cocaine. Defendant was thereafter arrested. The jury found defendant guilty of delivery of a controlled substance.

¶ 4 At the sentencing hearing, the following colloquy ensued.

“[THE COURT]: [Defendant], I forgot to ask you: Are you under any mental or physical disability? Any medication or under the influence of any drugs or alcohol affecting your ability to understand these proceedings.

[DEFENDANT]: Yes.

[THE COURT]: Are you prescribed any medication which you are not taking?

[DEFENDANT]: That I’m not taking, no.

[THE COURT]: Have you had ample time to prepare for sentencing and discussed with your attorney any offers made and possible penalties you face[?]

[DEFENDANT]: No.

[THE COURT]: No, you haven’t?

[DEFENDANT]: No.

[THE COURT]: You haven't talk [sic] to your attorney about possible penalties you face[?]

[DEFENDANT]: Yeah.

[THE COURT]: Okay. Have you had enough time to talk to her about that?

[DEFENDANT]: Yeah.

[THE COURT]: Are you satisfied with the services your attorney performed thus far in [sic] your behalf?

[DEFENDANT]: Yes, sir.”

¶ 5 Defendant declined to speak in allocution. Following arguments in aggravation and mitigation, the court sentenced defendant to seven years' and six months' imprisonment. Following sentencing, on that same date, defendant was admonished and pled guilty in an unrelated case, after the court found that he understood the charges against him, the penalties involved, and his plea was made freely and voluntarily.

¶ 6 On appeal, defendant does not contest his conviction. Rather, defendant contends solely that the trial court erred by failing to inquire into his fitness to be sentenced after his responses at his sentencing hearing raised a *bona fide* doubt regarding his fitness. The State contends that defendant's responses and demeanor throughout the proceedings and immediately after his sentencing demonstrated he understood the nature of the proceedings. Nevertheless, the State also contends that the trial court's questions and defendant's responses at sentencing are sufficiently ambiguous as to possibly raise a *bona fide* doubt of defendant's fitness to be sentenced and, therefore, a limited remand is required to clarify whether there existed a *bona fide* doubt of defendant's fitness.

¶ 7 Defendant acknowledges that he failed to preserve this issue below and asks that we review it under the second prong of the plain error doctrine. However, because the State does not argue that defendant has forfeited review of this issue, it has forfeited any forfeiture argument. See *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (rules of waiver and forfeiture apply to the State). Therefore, even though defendant did not raise this challenge in the trial court, we will review defendant's claim.

¶ 8 Due process bars prosecuting or sentencing a defendant who is not competent to stand trial and be sentenced. *People v. Sandham*, 174 Ill. 2d 379, 382 (1996). Fitness to stand trial and be sentenced “requires that a defendant understand the nature and purpose of the proceedings against him and be able to assist in his defense.” *Id.* “ ‘Fitness speaks only to a person’s ability to function within the context of trial; it does not refer to sanity or competence in other areas.’ ” *People v. Taylor*, 409 Ill. App. 3d 881, 896 (2011) (quoting *People v. Coleman*, 168 Ill. 2d 509, 524 (1995)). A person may be fit although his mind may be otherwise unsound. *Coleman*, 168 Ill. 2d at 524. Although a defendant’s fitness is presumed by statute, the trial court has a duty to order a fitness hearing, *sua sponte*, at any time a *bona fide* doubt arises regarding a defendant’s ability to understand the nature and purpose of the proceedings or assist in his defense. *Sandham*, 174 Ill. 2d at 382; 725 ILCS 5/104-11(a) (West 2014) (“The issue of the defendant’s fitness for trial, to plead, or to be sentenced may be raised by the defense, the State or the Court at any appropriate time before a plea is entered or before, during, or after trial. When a *bona fide* doubt of the defendant’s fitness is raised, the court shall order a determination of the issue before proceeding further.”)

¶ 9 A trial court's determination that a defendant is fit to stand trial and be sentenced, and whether a *bona fide* doubt as to a defendant's fitness has arisen, are reviewed under an abuse of discretion standard. See *Sandham*, 174 Ill. 2d at 382; *Taylor*, 409 Ill. App. 3d at 896; but see *People v. Haynes*, 174 Ill. 2d 204, 226 (1996) (noting that the trial court's ruling on the issue of fitness will be reversed only if it is against the manifest weight of the evidence). Factors relevant to a determination of whether a *bona fide* doubt of fitness exists include (1) the rationality of the defendant's behavior and demeanor at trial; (2) counsel's statements concerning the defendant's competence; and (3) any prior medical opinions on the issue of the defendant's fitness. *People v. Hanson*, 212 Ill. 2d 212, 223 (2004).

¶ 10 Here, we decline to accept the State's concession that there may have been a *bona fide* doubt as to defendant's fitness to be sentenced. See *People v. Nunez*, 236 Ill. 2d 488, 493 (2010) (a reviewing court is not bound by a party's concession). Contrary to the parties' assertions, the record reveals that there was never a *bona fide* doubt of defendant's fitness. Throughout the sentencing proceedings, defendant's behavior and demeanor were rational, responsive, and coherent. The record shows that neither defense counsel nor the State voiced concerns about defendant's ability to understand the nature of the sentencing proceedings. Further, immediately following sentencing in the instant case, defendant pled guilty to an unrelated offense and responded coherently to each admonishment by the trial court, who subsequently found that he understood the plea, the consequences, and freely pled. Defendant then asked whether he was entitled to a transcript from his preliminary hearing and trial, further demonstrating he understood the proceedings.

¶ 11 Moreover, a review of the entire record, including defendant's presentence investigation report, reveals that defendant has never reported having mental health issues, was not taking psychotropic medication, and clearly understood the nature and purpose of the proceedings against him. See *Sandham*, 174 Ill. 2d at 382 (Fitness to be sentenced requires that the defendant understand the nature and purpose of the proceedings against him). Based on the record before us, the only medical issue that defendant suffered from was glaucoma, which neither party argues affected his fitness. Thus, we cannot say that there was any indication that defendant was unfit to be sentenced.

¶ 12 Further, we find no evidence that shows defendant's responses to the court's questions at sentencing alerted the trial court that defendant was unable to understand the proceedings or assist in his defense such that the trial court was required to halt the proceedings and *sua sponte* order a fitness hearing. The parties agree that defendant's response, "Yes," to a compound question by the trial court regarding whether he was under any mental or physical disability and whether he was on medication, was ambiguous. However, the court clarified its question by following up with the question, "Are you prescribed any medication which you are not taking?" Defendant responded, "That I'm not taking, no." This response indicates that defendant was taking some form of medication; however, taking medication, on its own, is not sufficient to raise a *bona fide* doubt to defendant's fitness. See *People v. Rosado*, 2016 IL App (1st) 140826, ¶ 38 (a defendant's ingestion of psychotropic medication, without more, does not give rise to a *bona fide* doubt of defendant's fitness) (citing *People v. Mitchell*, 189 Ill. 2d 312, 330-31 (2000)).

¶ 13 Additionally, although defendant initially responded that he did not have time to prepare for sentencing, he subsequently stated that he had time to speak with his attorney about possible penalties and was satisfied with his attorney's performance. Defendant's single response to a compound question and his initial response that he did not have time to prepare for sentencing do not negate the entirety of the record which demonstrates that he was fit to be sentenced. Accordingly, we do not find that the trial court abused its discretion by failing to inquire further into defendant's fitness to be sentenced.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed.