

**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).

2019 IL App (4th) 170362-U

NO. 4-17-0362

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

June 7, 2019

Carla Bender

4<sup>th</sup> District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
SAMUEL L. GORDON,	)	No. 16TR2028
Defendant-Appellant.	)	
	)	The Honorable
	)	Michael L. Stroh,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices DeArmond and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* Pursuant to *Anders v. California*, 386 U.S. 738 (1967), the appellate court granted counsel’s motion to withdraw because no meritorious issues could be raised on appeal.

¶ 2 In January 2017, a jury found defendant, Samuel L. Gordon, guilty of driving while his license was revoked (DWLR). 625 ILCS 5/6-303 (West 2016). In February 2017, the trial court sentenced him to 300 days in jail. In April 2017, defendant filed a motion to reconsider, arguing his sentence was excessive. The trial court denied the motion, and defendant appealed.

¶ 3 In February 2019, the Office of the State Appellate Defender (OSAD) filed a motion to withdraw. In its brief, OSAD contends that appeal of this case presents no potentially meritorious issues for review. We agree, grant OSAD’s motion to withdraw as counsel, and affirm the trial court’s judgment.

¶ 4 I. BACKGROUND

¶ 5

#### A. Procedural History

¶ 6 In October 2016, defendant was issued four citations for DWLR, speeding, operating an uninsured vehicle, and driving without valid registration. The State subsequently dismissed the charges for operating an uninsured vehicle and driving without valid registration.

¶ 7 In January 2017, the case proceeded to a jury trial. Defendant testified he had recently been treated in a mental health clinic and that he believed he was unfit to stand trial. Defense counsel explained that defendant had mentioned his mental health treatment in prior interactions but added that “[h]e seemed lucid.” The trial court conducted an inquiry into defendant’s capacity to understand the proceedings and assist in his defense, talking to defendant about the nature of the charges, the possible penalties, and the trial process. See 725 ILCS 5/104-10 (West 2016). Defendant noted that he understood the allegations against him, the maximum possible penalties for each charge, the role of the jury, and his right to refuse to testify. The court concluded there was no *bona fide* doubt of defendant’s fitness and declined to conduct a separate fitness hearing. See *id.* § 104-11.

¶ 8 The State introduced documentation from the Illinois Secretary of State’s Office that indicated defendant’s license was revoked at the time of his arrest in October 2016. In addition, the two arresting police officers testified that they stopped defendant after observing his vehicle travelling above the speed limit and that defendant was unable to provide a driver’s license, proof of car insurance, or vehicle registration. After the State rested, defendant moved for a directed verdict, which the trial court denied. Defendant declined to testify. The jury found defendant guilty of DWLR and not guilty of speeding.

¶ 9 In February 2017, the trial court received a presentence investigation report (PSI) which indicated defendant had over 35 prior convictions ranging from juvenile delinquency

adjudications and traffic violations to misdemeanors and felonies. Six of defendant's convictions were for driving with a suspended license, with one DWLR case pending. The PSI indicated defendant's date of birth was December 13, 1989. The PSI also reiterated defendant's contention that he suffered from poor mental health. Defendant reported that he had a history of long-term depression, he had been diagnosed with a "confidential" mental disorder, and he was in "bad" mental and emotional condition.

¶ 10 B. The Sentencing Hearing

¶ 11 In February 2017, the trial court conducted a sentencing hearing. Defendant claimed that many of the prior convictions listed in the PSI were actually those of his former foster brother, also named Samuel Gordon and born on July 13, 1989. He further claimed their identities had been confused numerous times in the past. Defendant requested a continuance to determine which cases belonged to defendant, and the trial court granted this request.

¶ 12 In March 2017, the trial court resumed the sentencing hearing. The State called Derick Reinmann, a probation officer, to testify. The State introduced over 100 pages of documents into evidence, including booking photos from the cases listed in the PSI. Reinmann testified that although the booking documents variously listed defendant's date of birth as July 13, 1989, and December 13, 1989, each case consistently listed unique identifiers such as defendant's social security number and agency case number. He concluded that he believed defendant was the person referenced in each case in the PSI.

¶ 13 After recommending defendant be sentenced to 120 days in jail, the State informed the trial court that driving under the influence (DUI) was the basis for the revocation of defendant's license. In mitigation, the court considered that defendant's conduct had not threatened serious physical harm to others. In aggravation, the court considered defendant's prior

criminal history, juvenile delinquency, the need to deter others, and defendant's "dishonest" behavior during the proceedings, noting that all of the booking photos from the cases listed in the PSI looked like defendant. The trial court sentenced defendant to 300 days in jail with 1 day credit for time served.

¶ 14 In April 2017, defendant filed a motion to reconsider sentence. The trial court concluded that his sentence was not excessive and denied the motion.

¶ 15 C. The Current Appeal and OSAD's Motion To Withdraw

¶ 16 In May 2017, defendant filed a notice of appeal, and OSAD was appointed to represent defendant on appeal. In February 2019, OSAD filed a motion to withdraw and served a copy on defendant. Defendant has not filed a response.

¶ 17 II. ANALYSIS

¶ 18 In its brief, OSAD addresses several potential arguments that defendant could raise: (1) whether the trial court erred when it declined to hold a fitness hearing; (2) whether the motion for directed verdict was properly denied; (3) whether defendant was proven guilty beyond a reasonable doubt; and (4) whether defendant's sentence was proper. However, OSAD contends that appeal of this case presents no potentially meritorious issues for review. We agree with OSAD, grant its motion to withdraw as counsel, and affirm the trial court's judgment.

¶ 19 A. The Standard of Review and Applicable Law

¶ 20 The United States Supreme Court has set forth the procedures to be followed for an appellate attorney to withdraw as counsel. See *Anders v. California*, 386 U.S. 738 (1967); *People v. Mares*, 2018 IL App (2d) 150565, ¶ 6, 98 N.E.3d 554. Counsel's request to withdraw must be accompanied by a brief referring to anything in the record that could support an appeal. *People v. Meeks*, 2016 IL App (2d) 140509, ¶ 10, 51 N.E.3d 1109. After identifying issues that

counsel could conceivably raise, counsel must then explain why these potential arguments are without merit. *Id.* A copy of this motion must be provided to the defendant, who will then be given an opportunity to respond to the motion to withdraw. *Id.* The appellate court will then review the record to determine whether the available arguments are wholly without merit. *Id.*

¶ 21 B. Defendant's Fitness To Stand Trial

¶ 22 OSAD contends there is no arguably meritorious claim that the trial court abused its discretion when it concluded that no *bona fide* doubt of defendant's fitness to stand trial existed. We agree.

¶ 23 The due process clause proscribes the criminal prosecution of a defendant who is unfit to stand trial. U.S. Const., amend. XIV; *People v. Gillon*, 2016 IL App (4th) 140801, ¶ 20, 68 N.E.3d 942. A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purposes of the proceedings against him or to assist in his defense. 725 ILCS 5/104-10 (West 2016). "A defendant is presumed fit for trial and sentencing." *People v. Nichols*, 2012 IL App (4th) 110519, ¶ 32, 979 N.E.2d 1002

¶ 24 However, when a *bona fide* doubt of the defendant's fitness is raised, the trial court "shall order a determination of the issue before proceeding further." 725 ILCS 5/104-11(a) (West 2016). "A *bona fide* doubt exists when the facts raise a real, substantial, and legitimate doubt regarding a defendant's mental capacity to meaningfully participate in his defense." *People v. Westfall*, 2018 IL App (4th) 150997, ¶ 54, 115 N.E.3d 1148. Relevant factors include the defendant's demeanor, the rationality of the defendant's behavior, any prior medical opinions regarding the defendant's fitness, and representations by defense counsel as to defendant's fitness. *Id.*

¶ 25 When a trial court concludes that there is no *bona fide* doubt of the defendant's

fitness to stand trial and declines to conduct a fitness hearing, the standard of review is abuse of discretion. *Nichols*, 2012 IL App (4th) 110519, ¶ 31. “[A]n abuse of discretion occurs where the trial court’s decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it.” *People v. McDonald*, 2016 IL 118882, ¶ 32, 77 N.E.3d 26.

¶ 26 Here, the trial court conducted an inquiry into defendant’s fitness after defendant expressed that he did not believe he was fit to stand trial. It concluded defendant could understand the nature and purpose of the proceedings and assist in his own defense. Further, defense counsel stated that she thought defendant was lucid. The only evidence that defendant was unfit was his own assertions. Therefore, there is no arguably meritorious claim that the trial court abused discretion when it concluded that no *bona fide* doubt of defendant’s fitness to stand trial existed.

¶ 27 C. The Sufficiency of the Evidence

¶ 28 OSAD contends there is no arguably meritorious claim that (1) defendant’s motion for a directed verdict should have been granted or (2) the State failed to prove defendant guilty beyond a reasonable doubt. We agree.

¶ 29 A directed verdict is not appropriate unless no reasonable mind could fairly conclude, viewing the evidence in the light most favorable to the State, that the accused is guilty beyond a reasonable doubt. *People v. Clark*, 2016 IL 118845, ¶ 40, 50 N.E.3d 1120. Similarly, a guilty verdict shall not be overturned based upon a challenge to the sufficiency of the evidence unless no rational trier of fact, viewing the evidence most favorable to the State, could have found the essential elements of the crime beyond a reasonable doubt. *People v. Gray*, 2017 IL 120958, ¶ 35, 91 N.E.3d 876.

¶ 30 Here, the State presented officer testimony tending to demonstrate that defendant

was stopped and arrested after officers observed him driving on an Illinois highway without a valid driver's license. It also presented a certified document from the Illinois Secretary of State's Office indicating that defendant's license was revoked at that time he was driving. The defense presented no evidence to rebut the State's evidence.

¶ 31 Based upon the State's evidence, we conclude there is no arguably meritorious claim that (1) a directed verdict was appropriate or (2) the evidence was insufficient to sustain a conviction.

¶ 32 D. The Propriety of the Sentence

¶ 33 OSAD contends that any argument regarding the propriety of defendant's sentence is moot. We agree.

¶ 34 OSAD's remaining proposed arguments involve challenging the length of defendant's sentence. However, once a defendant has completed his sentence, the issue of the propriety of the length of the sentence becomes moot. *In re Christopher K.*, 217 Ill. 2d 348, 359, 841 N.E.2d 945, 952 (2005); *People v. Murrell*, 60 Ill. 2d 287, 294 (1975). Generally speaking, "reviewing courts will not decide moot or abstract questions or render advisory opinions." *In re J.T.*, 221 Ill. 2d 338, 349, 851 N.E.2d 1, 7 (2006).

¶ 35 In March 2017, the trial court sentenced defendant to 300 days in jail with credit for one day served. Defendant completed his sentence in January 2018. Because defendant has completed his sentence, this issue is moot. Therefore, no arguably meritorious claim predicated on the sentence being excessive may be entertained.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we agree with OSAD that no meritorious issue can be raised on appeal. We therefore grant OSAD's motion to withdraw as counsel and affirm the trial

court's judgment. See *Anders*, 386 U.S. at 744.

¶ 38            Affirmed.