IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 9/24/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

	)	1 CA-CR 12-0705
	)	
STATE OF ARIZONA,	)	DEPARTMENT E
	)	
Appellee,	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
v.	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
JILL FRALEY MANAHAN,	)	
	)	
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-145613-001

The Honorable Paul J. McMurdie, Judge
The Honorable Joseph C. Welty, Judge

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
By Joseph T. Maziarz, Chief Counsel,
Criminal Appeals/Capital Litigation Section
And Melissa Swearingen, Assistant Attorney General

Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
By Thomas Baird, Deputy Public Defender
Attorneys for Appellant

W I N T H R O P, Presiding Judge

¶1 Jill Fraley Manahan ("Appellant") appeals from her adjudication of guilty except insane and sentence for murder in the first degree and burglary in the second degree. She argues that, given her history of mental illness, the trial court erred when it accepted her waiver of constitutional trial rights without specifically determining the voluntariness of her waiver. She also argues that the court failed to fully inform her of the rights she waived. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On July 20, 2008, after being released from a psychiatric treatment facility, Appellant attempted to gain entry to her locked apartment by climbing a tree and jumping onto her balcony. Falling from the tree, Appellant crashed onto her elderly neighbor's patio. After the neighbor confronted her, Appellant went into the neighbor's apartment, took a kitchen knife, and stabbed the neighbor to death before exiting the apartment. Police arrived on the scene and later found Appellant on the floor of her own apartment, her clothes stained with blood. After being advised of her rights pursuant to *Miranda*,[1] Appellant admitted to police that she killed her

[1] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

neighbor because it was "part of the story" and "God told her to" do it. On July 23, the State charged Appellant with one count of first degree murder, in violation of Arizona Revised Statutes ("A.R.S.") section 13-1105 (West 2013),[2] and one count of burglary in the second degree, in violation of A.R.S. § 13-1507.[3]

¶3 Given the circumstances of the crime, Appellant underwent numerous mental health evaluations. Within a few days of her arrest, Appellant underwent an initial, brief assessment conducted by a psychologist. Psychiatric experts retained by the State and by the defense each evaluated Appellant over the course of the next year in anticipation of trial, primarily in an effort to determine whether Appellant was insane during the commission of the crimes. At the August 7 arraignment, the trial court invited the parties to file Rule 11 motions before the initial pretrial conference or comprehensive pretrial conference if Appellant's current competency was at issue. Neither party, nor the court on its own motion, sought a competency determination pursuant to Rule 11.

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[2] We cite the current versions of the relevant criminal statutes, unless otherwise noted, because no revisions material to this decision have since occurred.

[3] The State also alternatively charged Manahan with second degree murder, in violation of A.R.S. § 13-1104.

¶4 On September 2, 2008, Appellant filed a notice of disclosure stating that she intended to raise an insanity defense at trial. Sometime in May 2009, Appellant discussed with her attorney waiving her right to a jury trial and submitting the record to the trial court for adjudication, in exchange for an agreed-upon plea of guilty except insane. At the July 10 change of plea hearing, the parties offered the court a written waiver of jury trial, a submitted record, and a change of plea to guilty except insane. Under the written stipulation, the court would determine whether Appellant was guilty of first or second degree murder.

¶5 After conducting a colloquy, the trial court determined that Appellant "knowingly and intelligently waived the right to have a jury trial in this matter and that she has also knowingly and intelligently agreed to submit this record to the Court." On the basis of the jointly-submitted evidence, including the police reports and extensive psychiatric evaluations, the trial court adjudicated Appellant guilty except insane for murder in the first degree and burglary in the second degree. The court committed Appellant to the Arizona State Hospital and placed her under the jurisdiction of the Psychiatric Security Review Board for a period of 25 years on count one and 3.5 years on count two, with the terms running concurrently.

¶6 On September 24, 2012, Appellant requested a delayed notice of appeal pursuant to Rule 32 of the Arizona Rules of Criminal Procedure, and the trial court granted that request on October 23. On November 9, 2012, Appellant filed a timely delayed notice of appeal from the adjudication and sentence. We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, A.R.S. §§ 12–120.21(A)(1), 13–4031, and 13–4033(A), and Arizona Rule of Criminal Procedure 32.1.

ANALYSIS

¶7 Appellant argues that, given her history of mental illness, the trial court erred when it failed to make an explicit finding that she was competent to waive her trial rights and that her waiver was voluntary. Appellant also argues that the trial court failed to apprise her of the range of sentence that she faced if found guilty. We disagree, and affirm the adjudication and sentence.

¶8 In the absence of an objection before the trial court, we review alleged error arising from the waiver of trial rights for fundamental error. *See State v. Young*, 230 Ariz. 265, 268, ¶ 7, 282 P.3d 1285, 1288 (App. 2012). "To prevail under this standard of review, a defendant must establish that: (1) error occurred; (2) the error is fundamental; and (3) the error caused the defendant prejudice." *State v. Bunting*, 226 Ariz. 572, 574,

¶ 5, 250 P.3d 1201, 1203 (App. 2011). An error is fundamental when it is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005).

¶9 A criminal defendant forgoing a trial by jury and pleading guilty except insane before a judge on a submitted record waives three overlapping sets of trial rights. *See* Ariz. Const. art 6, § 17 (establishing right to trial by jury); Ariz. R. Crim. P. 17.2 (listing rights waived on guilty plea and submitted record); *State v. Avila*, 127 Ariz. 21, 24-25, 617 P.2d 1137, 1140-41 (1980) (listing rights waived on submitted record). To properly effectuate waiver, the trial court must determine that the criminal defendant knowingly and voluntarily waived these rights. *See State v. Allen*, 223 Ariz. 125, 127, ¶ 13, 220 P.3d 245, 247 (2009) (citing *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1969)). Given the law's solicitude regarding a defendant's competency, when the mental health of the defendant is at issue the validity of waiver may also be at issue. *See In re MH 2006-000749*, 214 Ariz. 318, 323, ¶ 23, 152 P.3d 1201, 1206 (App. 2007) ("[S]ome mentally ill persons have the capacity to knowingly and intelligently waive a fundamental right. But . . . a person who is so mentally disordered as to

be incompetent cannot knowingly or intelligently decide to waive such a right."); *see also State v. Wagner*, 114 Ariz. 459, 462, 561 P.2d 1231, 1234 (1977) ("A person may be competent to stand trial and still not be competent to waive his basic constitutional rights to that trial.").

¶10 Under Arizona Rule of Criminal Procedure 11.2,

> At any time after an information or complaint is filed or indictment returned, any party may request in writing, or the court on its own motion may order, an examination to determine whether a defendant is competent to stand trial, or to investigate the defendant's mental condition at the time of the offense.

Ariz. R. Crim. P. 11.2. In this case, the trial court specifically directed the parties to file any motion for Rule 11 evaluations prior to the pretrial conference. That neither the State nor defense counsel filed a Rule 11 motion signals that both sides were comfortable with Appellant's baseline mental competency to proceed. *See State v. Cornell*, 179 Ariz. 314, 322-23, 878 P.2d 1352, 1360-61 (1994); *cf. State v. Tiznado*, 23 Ariz. App. 483, 485, 534 P.2d 291, 293 *aff'd,* 112 Ariz. 156, 540 P.2d 122 (1975) ("Defense counsel is an officer of the court and has a duty when the plea is being taken to see that the requirements of the Rules of Criminal Procedure are complied with. Furthermore, the prosecutor is also under an obligation to see that a good change of plea takes place.").

¶11 During the July 10 hearing, Appellant waived her constitutional trial rights and pled guilty except insane on a submitted record, and after colloquy the trial court determined that Appellant did so "knowingly and intelligently." Although the trial court did not directly state its findings regarding Appellant's current mental health, "if the record is adequate [for a finding of competent waiver of constitutional rights] the absence of specific findings is not reversible error." *State v. Evans*, 125 Ariz. 401, 403, 610 P.2d 35, 37 (1980); *see also State v. Decello*, 111 Ariz. 46, 49, 523 P.2d 74, 77 (1974). Appellant underwent numerous psychiatric evaluations to determine her mental condition at the time of the offense, the results of which were jointly-submitted into evidence and presumably reviewed by the trial court. In the year preceding the plea hearing, two forensic psychiatrists extensively evaluated Appellant for several hours in multiple sessions. Although a primary issue for consideration during these evaluations was whether Appellant was legally insane at the time of the offense, each of these well-qualified evaluators performed significant current mental status examinations. The evidence presented by the parties' psychiatric experts affirmatively indicated that Appellant's current mental status was appropriate, and she was not demonstrating any delusions or distorted thinking that would trigger questions of her

competency at the time of the change of plea. The only evidence questioning Appellant's competency was an initial, brief assessment conducted by a psychologist a year earlier, and within only a few days of the homicide. At that time, the psychologist's preliminary conclusion seems to be that Appellant was not competent based upon her current lack of understanding of courtroom procedures, but that she easily could become competent with training. As a result, we conclude that the record contained substantial evidence indicating that Appellant was competent to waive her trial rights and that she did so knowingly, intelligently, and voluntarily.

¶12 Appellant also argues that the trial court committed fundamental error when it failed to inform her of the range of sentence that she faced by pleading guilty except insane on a submitted record. We disagree.

¶13 To effectuate proper waiver of her rights at trial, Appellant must have been apprised of the rights being waived. *See* Ariz. R. Crim. P. 17.2; *see also Avila*, 127 Ariz. at 24, 617 P.2d at 1140 ("[W]e list as follows those rights which are waived by submission of the case to the court or of which defendant must be informed."). Under Arizona Rule of Criminal Procedure 17.2

> Before accepting a plea of guilty or no contest, the court shall address the defendant personally in open

> court, informing him or her of and determining that he or she understands the following:
>
> . . . .
>
> b. The nature and range of possible sentence for the offense to which the plea is offered, including any special conditions regarding sentence, parole, or commutation imposed by statute[.][4]

Ariz. R. Crim. P. 17.2. Waiver of rights pursuant to Rule 17.2 does not require "that the defendant's knowledge must be imparted to him solely by the judge. His knowledge may come from many sources, and all that is required is that there be something in the record from which it can be logically found that the defendant did, in fact, have the required knowledge." *State v. Gutierrez*, 20 Ariz. App. 337, 339, 512 P.2d 869, 871 (App. 1973), *overruled on other grounds by State v. Ethington*, 121 Ariz. 572, 592 P.2d 768 (1979). Furthermore, "if it can be ascertained from an examination of the record that the defendant was aware of his rights, the judge's error in not advising him thereof shall be regarded as technical rather than reversible." *State v. Wesley*, 131 Ariz. 246, 249, 640 P.2d 177, 180 (1982).

¶14 In this case, although the trial court did not explicitly state for Appellant the nature and range of sentence during the July 10 hearing, the written waiver signed by

[4] Our supreme court in *Avila* also specified the rights that a defendant waives, and must be informed of waiving when she submits the case to the court on the record, including "[t]he right to know the range of sentence and special conditions of sentencing." *Avila*, 127 Ariz. at 24-25, 617 P.2d at 1140-41.

Appellant and discussed during colloquy unquestionably stated the nature and range of sentence. During colloquy, the trial court also confirmed that Appellant's attorney explained the implications of submitting the case to the court. As a result of the written waiver and oral colloquy between the trial court and Appellant, Appellant was properly informed of the trial rights she was waiving and the possible range of sentence if convicted. Therefore, we affirm Appellant's adjudication of guilty except insane and sentence.

CONCLUSION

¶15 Because the record indicates substantial evidence that Appellant was competent to waive her trial rights, and because Appellant's written waiver contained the nature and range of sentence, we affirm the adjudication and sentence.

_____/S/_____
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

_____/S/_____
MARGARET H. DOWNIE, Judge

_____/S/_____
JON W. THOMPSON, Judge