

[Cite as *State v. Smith*, 2010-Ohio-154.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92649

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHARLES SMITH

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-516223

BEFORE: Kilbane, P.J., McMonagle, J., and Boyle, J.

RELEASED: January 21, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT

Steve W. Canfil
1370 Ontario Street
Standard Building
Suite 2000
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
Kristin Karkutt
Assistant Prosecuting Attorney
The Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellant, Charles Smith (“Smith”), appeals his felonious assault conviction with a repeat violent offender specification. He argues that the trial court failed to conduct a hearing to determine his competency to stand trial before it accepted his guilty plea. After careful review of the record and law, we agree.

{¶ 2} Without first determining these critical aspects of Smith’s mental status as required by R.C. 2945.37, Smith’s ability to enter a competent plea remained in question, and the court had no way to determine whether Smith’s plea was knowingly, intelligently, and voluntarily entered under Crim.R. 11. We reverse Smith’s felonious assault conviction and remand this case to the trial court for further proceedings consistent with this opinion.

Statement of Facts and Procedural History

{¶ 3} On October 6, 2008, a Cuyahoga County Grand Jury returned a three-count indictment against Smith charging him with two counts of felonious assault, both second degree felonies, in violation of R.C. 2903.11(A)(1) and (A)(2), and one count of domestic violence, a first degree misdemeanor, in violation of R.C. 2919.25(A), for repeatedly slashing Gloria Jennings with a box cutter. Each of the felonious assault charges carried a repeat violent offender (“RVO”) specification.

{¶ 4} On October 21, 2008, pursuant to R.C. 2945.37, Smith's counsel made an oral motion to refer Smith to the court's psychiatric clinic to evaluate his competency to stand trial, to determine his sanity at the time of the act, to determine the propriety of transferring the case to the mental health docket, and for a report on the psychiatric factors regarding disposition.

{¶ 5} On October 22, 2008, the trial court journalized an entry granting Smith's motion. The record does not reflect that any report was filed pursuant to R.C. 2945.37(C). No psychiatric report is referenced in the docket or the transcript, nor is the report contained within the record.

{¶ 6} On November 24, 2008, the trial court convened a multiple defendant plea hearing, at which time it accepted Smith's guilty plea to Count 1, felonious assault, in violation of R.C. 2903.11(A)(1), with a RVO specification, as well as the guilty pleas of two other defendants on unrelated matters. In exchange for Smith's guilty plea, the State dismissed the remaining felonious assault charge under R.C. 2903.11(A)(2), and the domestic violence charge under R.C. 2919.25(A).

{¶ 7} On December 17, 2008, the court held a sentencing hearing. Smith's trial counsel urged the court to consider Smith's mental status at the time of the act, including the fact that Smith was experiencing auditory hallucinations. The trial court sentenced Smith to eight years of incarceration on the felonious assault charge and ten years of incarceration

on the RVO specification, to be served consecutively, for an aggregate term of eighteen years of incarceration. (Tr. 17-19.)

{¶ 8} On January 7, 2009, this appeal followed, asserting two assignments of error for review. The State never submitted a reply brief in this matter. We need only address Smith's first assignment of error, because it is dispositive.

{¶ 9} Smith's first assignment of error states:

“When the issue of a defendant's competency to stand trial is raised prior to trial, the court errs when it proceeds to disposition without holding a hearing on the issue of defendant's competency as required by statute and the State and Federal Constitutions.”

{¶ 10} In Ohio, “[i]t is settled law that ‘a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.’ The conviction of an accused while he is not legally competent to stand trial violates due process of law.” *State v. Rubenstein* (1987), 40 Ohio App.3d 57, 60, 531 N.E.2d 732, 736. (Internal citations omitted.) In addition, R.C. 2945.37 provides:

“In a criminal action in a court of common pleas or municipal court, the court prosecutor, or defense may raise the issue of the defendant's competence to stand trial. If the issue is raised before trial, the court shall hold

a hearing on the issue as provided in this section.”

(Emphasis added.)

{¶ 11} R.C. 2945.38 provides that “[u]pon the evidence submitted, the court shall determine the defendant’s competency to stand trial and shall make an order under section 2945.38 of the Revised Code.” In this case, no such hearing was conducted under R.C. 2945.37, and no such order was entered under R.C. 2945.38, despite the fact that the record indicates that the psychiatric reports were ordered prior to the trial court’s acceptance of Smith’s guilty plea. Further, Smith’s counsel did not waive the competency hearing or stipulate to a finding of competency.

{¶ 12} Our court has long held that “a trial court must hold a hearing on the issue of defendant’s competency if the issue is raised prior to trial.” *State v. Corethers* (1993), 90 Ohio App.3d 428, 433, 629 N.E.2d 1052, 1055, citing *State v. Bekesz* (1991), 75 Ohio App.3d 436, 441, 599 N.E.2d 803, 806; see, also, *State v. McGrath*, Cuyahoga App. No. 91261, 2009-Ohio-1361, holding inter alia that a trial court commits reversible error by failing to hold a competency hearing before accepting a guilty plea or make the results of the psychiatric report part of the record. *Id.* at syllabus.

{¶ 13} Without making use of the psychiatric reports provided to them, trial courts are ill-equipped to determine a defendant’s competency to stand trial. Without first determining a defendant’s competency through a hearing

as required by R.C. 2945.37, a trial court cannot be sure whether a defendant is competent to stand trial, to help with his own defense, or enter a knowing, intelligent, and voluntary plea under Crim.R. 11. See *State v. Bolin* (1998), 128 Ohio App.3d 58, 62, 713 N.E.2d 1092 (a defendant who is not competent to stand trial is not competent to enter a negotiated plea); see, also, *State v. Engle*, 74 Ohio St.3d 525, 527, 1996-Ohio-179, 660 N.E.2d 450 (a defendant must make a guilty plea knowingly, intelligently, and voluntarily); Crim.R. 11.

{¶ 14} In this matter, the record is devoid of any indication that the trial court held a hearing to first determine Smith's competency, as required by Ohio law, before proceeding further with the case. Moreover, Smith's counsel did not stipulate to a finding of competency, nor did he waive the requirement of the hearing. See R.C. 2945.37. At the plea hearing, the court, Smith's counsel, and the assistant county prosecutor never mentioned appellant's mental status.

{¶ 15} We reverse Smith's convictions and remand this case to the trial court to vacate the plea and conduct a hearing on Smith's competency pursuant to R.C. 2945.37.

{¶ 16} Our disposition of the first assignment of error renders any discussion of Smith's subsequent assignment of errors moot.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

CHRISTINE T. McMONAGLE, J., and
MARY J. BOYLE, J., CONCUR