

[Cite as *State v. Cruz*, 2010-Ohio-3717.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93403

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RAYSHAWN CRUZ

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-518765

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

RELEASED AND JOURNALIZED: August 12, 2010

ATTORNEY FOR APPELLANT

Kevin H. Cronin
The Brown Hoist Building
4403 Saint Clair Avenue
Cleveland, OH 44103

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
Patrick Thomas
Assistant Prosecuting Attorney
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, OH 44113

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, Rayshawn Cruz, appeals from the trial court's judgment, entered after his guilty plea, sentencing him to 16 years in prison. He contends that the juvenile court's failure to address the issue of his competency prior to transferring his case to common pleas court constituted reversible error that mandates vacating his plea and remanding to juvenile court. Although we find no error in the juvenile court's ruling, we reverse and remand because the common pleas court failed to conduct a competency hearing before it accepted Cruz's guilty plea.

{¶ 2} Cruz was charged in juvenile court with aggravated burglary, aggravated robbery, kidnapping, attempted rape, and felonious assault. He was sixteen years old at the time. The charges arose out of an incident where Cruz and a 16-year-old codefendant broke into the victims' home with loaded handguns, pistol-whipped one of the victims, attempted to rape the other victim, and robbed them both.

{¶ 3} The state moved under R.C. 2152.12 et seq. for discretionary transfer of jurisdiction to common pleas court. After a hearing, the juvenile court found probable cause and, in anticipation of the amenability hearing required for discretionary transfers, ordered a psychological assessment of Cruz for purposes of weighing the factors for and against transfer.

{¶ 4} On the day of the amenability hearing, counsel for Cruz moved for a full competency evaluation in light of the "suggestion of incompetency" contained in the psychological assessment report. Relying on the report, counsel asserted that Cruz could not adequately assist in his defense because he did not possess an understanding of his constitutional rights and his significant intellectual limitations severely limited his decision-making abilities. The juvenile court denied the motion for a competency evaluation, and ruled that the issue of competency could be raised later in juvenile court if jurisdiction was not transferred, or in the common pleas court if jurisdiction was transferred.

{¶ 5} After the amenability hearing, the juvenile court found that Cruz was not amenable to care or rehabilitation within the juvenile system and ordered him bound over to common pleas court, where he was charged with three counts of aggravated burglary, four counts of aggravated robbery, four counts of felonious assault, two counts of kidnaping, attempted rape, and gross sexual imposition. All counts carried firearm and forfeiture specifications.

{¶ 6} Cruz requested a competency evaluation, and the trial court referred him to the court psychiatric clinic to evaluate his competency to stand trial and his sanity at the time of the alleged acts. The record does not reflect that any report was filed pursuant to R.C. 2945.37(C); no psychiatric report is referenced on the docket or in the transcript of the plea hearing, and no report is contained in the record.

{¶ 7} Both Cruz and the state iterate in their briefs that the sanity evaluation indicated that Cruz was suffering from paranoid schizophrenia and mental retardation at the time of the alleged offenses, but concluded that neither the mental disease nor mental defect caused him to not know the wrongfulness of the alleged behavior, and that the competency report found that he was competent to stand trial. None of this information, however, is contained in the record before us.

{¶ 8} Pursuant to a plea agreement with the state, Cruz subsequently pled guilty to one count of aggravated burglary, two counts of aggravated robbery, two counts of felonious assault, and one count of attempted rape; the other charges were nolle. The trial court sentenced him to 16 years in prison and five years of postrelease control, and ordered that he report as a Tier III sexual offender for the rest of his life. Cruz now appeals from this judgment.

II

{¶ 9} In two assignments of error, Cruz contends that the juvenile court's failure to address the issue of his competency prior to transferring his case to common pleas court, where he was tried as an adult, was an abuse of discretion and constituted reversible error. He argues that the juvenile court's failure to address competency before transferring his case "tainted the proceedings" and "opened the door" to "the substantial risk of higher penalties" of punishment in the common pleas court, without any evaluation regarding whether he was competent to understand the proceedings and assist in his defense.

{¶ 10} We find no error in the juvenile court's ruling denying Cruz's request for a competency evaluation. The proceeding before the juvenile court was an amenability hearing under R.C. 2152.12(B) held to assess the factors for and against transfer of jurisdiction to common pleas court. Under

R.C. 2152.12(B), the juvenile court may transfer a case if it finds (1) that the child was 14 years of age or older at the time of the offense, (2) there is probable cause to believe that the child committed the charged offense, and (3) the child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making its determination under this section, the juvenile court is to consider the relevant factors listed in R.C. 2152.12(D) in favor of a transfer, and the factors listed in R.C. 2152.12(E) against such a transfer. Competency is not one of the factors; rather, the juvenile court must determine whether the child is emotionally, physically, or psychologically mature enough for the transfer. R.C. 2152.12(D)(8) and (E)(6). Accordingly, we find no error in the juvenile court's ruling.

{¶ 11} Nevertheless, we reverse and remand because the common pleas court erred in accepting Cruz's plea without holding a hearing on the issue of his competency where the issue was raised before trial, both in juvenile court and the common pleas court.

{¶ 12} "It 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. Smith, 8th Dist. No. 92649, 2010-Ohio-154, ¶10, quoting *State v. Rubenstein* (1987), 40 Ohio App.3d 57, 60, 531 N.E.2d 732. See, also, *State v. Braden*, 98 Ohio St.3d 354, 2003-Ohio-1325, 785 N.E.2d 439, ¶48.

{¶ 13} Under R.C. 2945.37(B), a competency hearing is mandatory where the issue is raised before trial:

{¶ 14} “In a criminal action in a court of common pleas, a county court, 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 the trial has commenced, the court *shall* hold a hearing on the issue as provided in this section.” (Emphasis added.)

{¶ 15} Further, under R.C. 2945.37(G), the court shall determine the defendant’s competency and “*shall* enter an order authorized by section 2945.38 of the Revised Code.” (Emphasis added.)

{¶ 16} This 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.” *Smith*, supra, at ¶12, citing *State v. Corethers* (1993), 90 Ohio App.3d 428, 433, 629 N.E.2d 1052; *State v. McGrath*, 8th Dist. No. 91261, 2009-Ohio-1361.

Without such a hearing, the trial court cannot adequately ascertain whether the defendant can understand the nature of the proceedings against him and assist in his defense. *Smith* at ¶13.

{¶ 17} Furthermore, without first determining the defendant's competency in a hearing as required by R.C. 2945.37, the trial court cannot make a reliable determination of the defendant's competency to enter a knowing, intelligent, and voluntary plea under Crim.R. 11. *Id.* A defendant who is not competent to stand trial is not competent to enter a negotiated plea. *State v. Bolin* (1998), 128 Ohio App.3d 58, 61, 713 N.E.2d 1092, citing *Godinez v. Moran* (1993), 509 U.S. 389, 113 S.Ct. 2680, 125 L.Ed.2d 321. Thus, where the issue of competency is raised, a trial court commits reversible error by failing to hold a competency hearing before accepting a guilty plea or make the result of the psychiatric report part of the record. *Smith; McGrath.*

{¶ 18} Here, despite the trial court's referral of Cruz to the court psychiatric clinic, the record reflects that no hearing was held pursuant to R.C. 2945.37, and no order determining Cruz's competency was entered before the court accepted his guilty plea. The record further reflects that Cruz's counsel did not stipulate to a finding of competency, nor did he waive the requirement of the hearing. See R.C. 2945.37.

{¶ 19} We cannot conclude that the trial court's failure to conduct the statutorily required hearing was harmless error. See, e.g., *State v. Bock* (1986), 28 Ohio St.3d 108, 502 N.E.2d 1016 (court's failure to conduct competency hearing harmless error where defendant participated in trial,

offered his own testimony, and the record failed to reveal sufficient indicia of incompetency). The issue of Cruz's competency was raised twice, first in juvenile court and then again in common pleas court, but never addressed before the plea. Unlike *Bock*, we cannot glean sufficient information from this record to determine whether the court's failure to conduct the hearing was harmless.

{¶ 20} Finally, on this record, Cruz's plea did not waive a challenge to the trial court's failure to conduct the required competency hearing. A defendant who has pled guilty may, on appeal, attack only the voluntary, knowing, and intelligent nature of the plea, and may not raise independent claims relating to alleged deprivation of rights that occurred prior to the entry of the plea, *except to the extent such error caused the plea to be less than voluntary, knowing, and intelligent.* *State v. Sadowsky*, 8th Dist. Nos. 90696 and 91796, 2009-Ohio-341, fn.1; see, also, *State v. Spates* (1992), 64 Ohio St.3d 269, 272, 595 N.E.2d 351. Here, the court's failure to conduct a competency hearing, when the issue was raised before Cruz entered his plea, goes *directly* to whether his plea was voluntary, knowing, and intelligent.

{¶ 21} Accordingly, Cruz's assignments of error relating to the juvenile court's ruling are overruled, but the matter is reversed and remanded to the common pleas court with instructions for the trial court to vacate the plea and conduct a hearing on Cruz's competency pursuant to R.C. 2945.37.

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 issue out of this court directing the common pleas 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.

CHRISTINE T. McMONAGLE, JUDGE

MARY EILEEN KILBANE, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR