In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-09-00141-CR

CHRISTOPHER D. MANNING, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 71st Judicial District Court
Harrison County, Texas
Trial Court No. 08-0332X

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Carter

MEMORANDUM OPINION

Christopher D. Manning[1] entered a plea of no contest[2] to the charge of aggravated assault with a deadly weapon, was tried by the court, convicted, and sentenced to nine years' imprisonment in the Institutional Division of the Texas Department of Criminal Justice.[3] Manning appeals, claiming the trial court erred in failing to sua sponte conduct an informal inquiry into his competence at the time it accepted his plea and at the time of Manning's punishment hearing two months later. Because we hold that the trial court made sufficient inquiry at the time the plea was given, and because there was no abuse of discretion in failing to conduct a second informal inquiry into competency at the punishment hearing, we affirm the judgment of the trial court.

I. DISCUSSION

A. Competency

A trial court's decision not to conduct a competency inquiry is reviewed for an abuse of discretion. *Moore v. State*, 999 S.W.2d 385, 393 (Tex. Crim. App. 1999); *Gray v. State*, 257 S.W.3d

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[1]We have before us three companion appeals involving the same appellant. His name is spelled differently in each indictment and trial court judgment. Therefore, in each opinion, we have used the spelling used by the trial court in those documents.

[2]A plea of no contest is a criminal defendant's plea "that, while not admitting guilt, the defendant will not dispute the charge . . . . Also termed *nolo contendre*; *non vult contendre*." BLACK'S LAW DICTIONARY 1147, 1159 (9th ed. 2009).

[3] Manning also entered no contest pleas to two additional indictments alleging possession of a firearm at a prohibited place and debit card abuse. Manning was found guilty on both charges. Competency issues with respect to these cases are the subject of separate appeals.

825, 827 (Tex. App.—Texarkana 2008, pet. ref'd). The test for abuse of discretion is not whether, in the opinion of the reviewing court, the facts present an appropriate case for the trial court's action; rather, it is a question of whether the trial court acted without reference to any guiding rules or principles, and the mere fact that a trial court may decide a matter within its discretionary authority differently than an appellate court does not demonstrate such an abuse. *Howell v. State*, 175 S.W.3d 786, 792 (Tex. Crim. App. 2005).

When evidence "suggesting the defendant may be incompetent to stand trial comes to the attention of the court, the court on its own motion shall suggest that the defendant may be incompetent to stand trial." TEX. CODE CRIM. PROC. ANN. art. 46B.004(b) (Vernon 2006). The standard for determining whether a trial court should conduct an inquiry into a defendant's competence is that of a bona fide doubt. That is, if the judge has a bona fide doubt regarding the defendant's competency to stand trial, the judge must conduct an inquiry to determine if there is evidence that would support a finding of incompetence. *Montoya v. State*, 291 S.W.3d 420, 425 (Tex. Crim. App. 2009).[4]

[4]Under the former competency statute, TEX. CODE CRIM. PROC. ANN. art. 46.02, § 2(b), *repealed by* Act of Apr. 30, 2003, 78th Leg., R.S., ch. 35, § 15, 2003 Tex. Gen. Laws 57, 72 (effective Jan. 1, 2004), a competency hearing was required if the evidence was sufficient to raise a bona fide doubt in the mind of the judge about the defendant's legal competency. *Alcott v. State*, 51 S.W.3d 596, 601 (Tex. Crim. App. 2001). *Montoya* resolved any uncertainty regarding the continued viability of the bona fide doubt standard under Article 46B.004 of the Texas Code of Criminal Procedure. *Montoya*, 291 S.W.3d at 424.

A bona fide doubt is "a real doubt in the judge's mind as to the defendant's competency." *Fuller v. State*, 253 S.W.3d 220, 228 (Tex. Crim. App. 2008), *cert. denied*, 129 S.Ct. 904 (2009). Evidence sufficient to create a bona fide doubt is that which shows a "recent severe mental illness, at least moderate retardation, or truly bizarre acts by the defendant." *Id.*; *see also Gray*, 257 S.W.3d at 829.

If, after an informal inquiry, the trial court determines that evidence exists to support a finding of incompetency, the trial court shall order an examination to determine whether the defendant is incompetent to stand trial. *See* TEX. CODE CRIM. PROC. ANN. art. 46B.005(a) (Vernon 2006); *Salahud-din v. State*, 206 S.W.3d 203, 208 (Tex. App.—Corpus Christi 2006, pet. ref'd).

A defendant is incompetent to stand trial if he or she does not have: (1) sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding; or (2) a rational as well as factual understanding of the proceedings against him or her. *See* TEX. CODE CRIM. PROC. ANN. art. 46B.003(a) (Vernon 2006). A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence. *See* TEX. CODE CRIM. PROC. ANN. art 46B.003(b) (Vernon 2006).

B. The Plea Hearing

The plea hearing was conducted April 29, 2009. After discussing preliminary housekeeping matters with counsel, the court sua sponte entered into the following dialogue with Manning before accepting Manning's no contest plea:

THE COURT: . . . Mr. Manning -- first of all, Mr. Manning, have you ever been treated for any kind of mental illness?

[MANNING]: Yes, sir, when I went to TYC [Texas Youth Commission].

THE COURT: Okay. Let me ask you this: Did they undertake any treatment?

[MANNING]: No, sir.

THE COURT: Okay. Are you under the influence of any drugs or alcohol that would lead you to believe that you would not understand what the Court is asking you today?

[MANNING]: No, sir.

THE COURT: Mr. Hurlburt, in your opinion, do you think that Mr. Manning is competent?

[DEFENSE COUNSEL]: Absolutely, Your Honor.

. . . .

THE COURT: Okay. Mr. Manning, we are here on three matters that you, your attorney, and the State have agreed can be heard together, and I think it's your understanding that you have no problem with it being heard together, also; is that correct?

In other words, the Court can hear these three cases at the same time?

[MANNING]: Yes, sir.

. . . .

THE COURT: . . . And I'm going to show you State's Exhibit No. 1, and this document is headed at the top, Waiver of Jury Trial, but in particular, it looks like your signature appears on this document in about three locations on the front side, and it also appears on the second page about two times; is that correct?

[MANNING]: Yes, sir.

. . . .

THE COURT: Now, as it relates to the documents in this matter, the exhibits that have been entered into evidence here, did you get an opportunity, before signing these documents to go over them in detail with your attorney, Mr. Hurlburt?

[MANNING]: Yes, sir.

THE COURT: Did he explain to you what they entailed and what was involved in them and what they meant?

[MANNING]: Yes, sir.

THE COURT: Okay. You understand it?

[MANNING]: Yes, sir.

THE COURT: All right. Now, as to how it relates to your signature on these documents,[5] did you sign these documents freely and voluntarily?

[MANNING]: Yes, sir.

THE COURT: You were not forced or coerced or any promises made to you to sign these documents; is that correct?

[MANNING]: No -- yes, sir.

Based on these excerpts, it appears that Manning knew and understood that he was in court on three different charges and that he voluntarily consented to the court hearing the charges together. Manning indicated that the documents bearing his signature were explained to him by counsel, that

[5]The documents referenced by the court include (in addition to the waiver of jury trial) written felony admonitions to the defendant for the offense of aggravated assault and the trial court's certification of defendant's right to appeal.

he understood them, and that he freely and voluntarily signed them. Further, his attorney's response indicated that Manning was competent. After this exchange,[6] during which the trial court had the opportunity to observe Manning's behavior and demeanor, the court accepted Manning's plea of no contest to the charges then pending.

Manning complains that the court failed to sua sponte conduct an informal inquiry into his competency. The exchange quoted above indicates that the court did, in fact, conduct such an inquiry. There are no "red flags" uncovered by the inquiry or by the exchange between Manning and the court that would indicate a "recent severe mental illness, at least moderate retardation, or truly bizarre acts by the defendant." *Fuller*, 253 S.W.3d at 228. Manning's statement that he was treated for mental illness while at TYC does not raise the issue of competency. In order to raise the issue of competency by means of the defendant's past mental health history, there generally must be evidence of recent severe mental illness or bizarre acts by the defendant or of moderate retardation. *Moore*, 999 S.W.2d at 395. Said another way, evidence of a defendant's past mental illness is evidence of incompetence only where the past mental illness interferes with the defendant's present ability to communicate with his or her attorney or with the defendant's understanding of the

[6]The quoted exchange between the court and Manning represents only a portion of the actual exchange that took place. The court went into great detail to explain Manning's right to a jury trial, that he was waiving that right and the consequences of doing so; the court further explained the effect of a no contest plea and the consequence of the acceptance of that plea by the court; also before accepting Manning's plea, the court explained the sentencing range for each offense. As to each of these matters, Manning indicated that he knew and understood what he was doing and the effect of his actions.

proceedings against him or her. *See Baldwin v. State*, 227 S.W.3d 251, 253 (Tex. App.—San Antonio 2007, no pet.). The record shows no indication of recent severe mental illness, moderate retardation, or truly bizarre acts, and there was no suggestion by Manning's attorney, the State, or the trial court, all of whom observed Manning's behavior at the hearing, that Manning appeared unable to understand the proceedings.

Because there is no evidence in the record of the April 29, 2009, hearing to rebut the presumption of competence, the trial court was not required to make further inquiry into Manning's competence.[7] The trial court, therefore, properly accepted Manning's plea of no contest without further inquiry into competency.

C. The Punishment Hearing

In his second point of error, Manning claims the trial court erred in failing to sua sponte conduct an informal inquiry into his competency during the punishment phase of his trial. The question here is whether the trial court abused its discretion when in light of the evidence presented at punishment, it did not conduct a further competency inquiry at that time.

The punishment hearing took place two months after the plea hearing, on June 30, 2009.[8] Ruby Annette Williams, Manning's mother, was the lone testifying witness. Williams testified that

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[7]We note the similarity of this case to that of *Gray*, 257 S.W.3d 825, wherein we determined that there was no evidence in the record to rebut the presumption of competence such that the trial court would have been required to make further inquiry into the defendant's competence.

[8]Sentencing was initially scheduled for June 16, 2009, but was continued because Manning failed to appear for the hearing.

Manning was struck by a vehicle three times as a child. The most serious of this series of accidents occurred when Manning was struck by a vehicle at the age of eight, causing injuries to his head, leg, and face. The long-term effects of Manning's head injuries included a change in behavior such that Manning experienced difficulty socializing, struggled with mental problems, and experienced headaches. These ongoing problems led to frequent hospitalizations and psychiatric counseling. Two additional accidents in the following two years caused additional medical problems. As a result, Manning was prescribed multiple medications,[9] which he continued to take for several years.[10] Williams described Manning as "slow," not having any friends, and as having been diagnosed with bipolar disorder at some point in the past. She believed Manning to be suicidal on the day the original punishment hearing was to take place.[11]

New evidence presented at the punishment hearing included information regarding Manning's childhood injuries, a diagnosis of bipolar disorder at some unknown time in the past, past suicidal behavior, and his mother's belief that Manning was suicidal earlier that same month.[12] This evidence

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[9]Manning was prescribed Adderall, Seroquel, and Depakote.

[10]Manning was not taking his medications at the time of the hearing, and had not done so for approximately one year. Manning was eighteen years old at the time of the hearing on sentencing.

[11]Williams offered very little explanation for this statement, except to explain that Manning had been suicidal in the past and that he did not want to go to prison.

[12]Williams also testified that she was confused about the time of the original sentencing hearing, believing the hearing to be at 1:30 p.m., rather than at 3:00 p.m. When Manning left the house at 1:15 p.m., she became worried that he might be "running off to harm himself."

notwithstanding, there was no evidence presented at the punishment hearing of "at least moderate retardation or truly bizarre acts" on Manning's part. The only new issue raised by this evidence is whether Williams' belief that Manning was suicidal approximately two weeks before the punishment hearing is sufficient to indicate that Manning suffered from a "recent severe mental illness."

There is nothing in the record to confirm that Manning was indeed suicidal before the punishment hearing other than Williams' subjective belief that such was the case. Even if there was evidence that Manning was clinically diagnosed by a psychiatrist as suicidal, that would not constitute evidence of incompetency to stand trial. Symptoms of depression and evidence of suicide attempts do not amount to evidence of "recent severe mental illness." *Thompson v. State*, 915 S.W.2d 897, 902 (Tex. App.—Houston [1st Dist.] 1996, pet. ref'd).

Manning's previous diagnosis of bipolar disorder and depression, together with Williams' subjective belief that Manning was suicidal approximately two weeks before the punishment hearing implicate Manning's competence to stand trial only if they impact his "present ability to consult with his counsel with a reasonable degree of understanding" and his "rational and factual understanding of the proceedings against him." *See Brown v. State*, 129 S.W.3d 762, 766 (Tex. App.—Houston [1st Dist.] 2004, no pet.) (holding defendant's previous mental and behavioral impairments, inability to recall past events, inability to recall circumstances of charged offense, and depression did not establish required elements of competency); *Reeves v. State*, 46 S.W.3d 397, 399–400 (Tex. App.—Texarkana 2001, pet. dism'd) (evidence that defendant's birth mother drank heavily while

pregnant with defendant and of defendant's drug addiction and suicide attempt did not reflect on defendant's ability to understand and participate in proceedings against her); *Rice v. State*, 991 S.W.2d 953, 957 (Tex. App.—Fort Worth 1999, pet. ref'd) (holding competency test is not whether someone labored under mental, behavioral, or psychological impairment); *Townsend v. State*, 949 S.W.2d 24, 27 (Tex. App.—San Antonio 1997, no pet.) (holding competency test is not met by evidence of depression or mental illness). Given the informal inquiry made by the trial court at the time it took Manning's plea, the evidence presented at the punishment hearing was not sufficiently compelling to require the trial court to further inquire into Manning's ability to consult with counsel or understand the proceedings against him. This is particularly true in light of the fact that Manning's own counsel did not raise the issue of Manning's competence to stand trial at either the hearing April 29 or the hearing June 30.[13]

II. CONCLUSION

Because nothing in the record raised the issue of Manning's ability to consult with his counsel or his ability to understand the proceedings and the charges against him at any time during the proceedings, we hold that the evidence presented during the punishment phase of the trial was insufficient to suggest that Manning was incompetent to stand trial. *See* TEX. CODE CRIM. PROC. ANN. arts. 46B.003(a), 46B.004(c). After reviewing the entire record from the plea hearing and the punishment phase of trial, we cannot say that the trial court abused its discretion by failing to

[13]The issue of Manning's competence was likewise not raised by the State.

conduct further inquiry into Manning's competency. The trial court's informal inquiry set forth above established that Manning was not suffering from recent severe mental illness or moderate retardation, that he understood the charges he was facing, that he had been able to communicate in a meaningful way with his attorney, and that his own counsel had no question about his competence to stand trial. The informal competency inquiry conducted by the trial court satisfied Chapter 46B.

Accordingly, we affirm the judgment of the trial court.

Jack Carter
Justice

Date Submitted: November 3, 2009
Date Decided: November 12, 2009

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