

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 21, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2013AP782-CR
2013AP783-CR
2013AP784-CR
2013AP785-CR
2013AP786-CR**

**Cir. Ct. Nos. 2003CF776
2003CF1750
2010CF1482
2010CF1931
2010CM2580**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MATTHEW W.S. DORMAN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
STEPHEN E. EHLKE, Judge. *Affirmed.*

Before Lundsten, Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Matthew Dorman appeals an order denying his motion for a competency evaluation pursuant to *State v. Debra A.E.*, 188 Wis. 2d

111, 523 N.W.2d 727 (1994).¹ He argues that: (1) the circuit court's decision was improperly based on the cost of conducting the evaluation; (2) the finding that Dorman was competent is clearly erroneous because it ignored Dorman's testimony and focused on improper facts; and (3) the court erroneously exercised its discretion because it failed to determine whether Dorman understood the proceedings. We reject these arguments, and affirm the order.

BACKGROUND

¶2 In November 2011, Dorman pled guilty to six offenses. The court imposed sentences for those crimes as well as three other offenses for which Dorman was previously placed on probation. In January 2013, Dorman's postconviction counsel filed a motion for a competency evaluation, alleging that Dorman lacked the ability to assist counsel or to make decisions with a reasonable degree of rational understanding. Believing that there was a state contract to pay for the evaluation and that it was the most expedient way of resolving the matter, the court granted the motion. Upon being informed that the evaluation was not automatically available under an existing contract, the court reconsidered its decision and withdrew the order for an evaluation.

¶3 Prior to the next hearing, Dorman's counsel wrote a letter to the court explaining in more detail why she filed the motion for a competency evaluation. Counsel stressed the necessity of Dorman being able to decide whether to commence an appeal and what issues to raise if an appeal is filed, and

¹ The State questions whether the order is a final order appealable as a matter of right under WIS. STAT. § 808.03(1) (2011-12). We conclude that it is a final order terminating a special proceeding. There is no matter currently pending in the circuit court in these cases.

that Dorman must be able to identify facts outside the record that might affect the validity of his pleas and whether there is any new factor that might justify a reduced sentence. At the hearing, the court indicated that the record at that point was not sufficient to raise a real issue about Dorman's competency. The court noted the sophisticated nature of Dorman's crimes, a competency evaluation from 2011 that found Dorman to be malingering, the fact that the cases were terminated by pleas rather than lengthy trials, Dorman's apparent understanding at the time the court accepted his pleas, and the lack of affidavits from the prison that might indicate lack of competency. The court suggested that Dorman was "again trying to play the system." The court stated its belief that Dorman was unwilling, not unable, to assist counsel.

¶4 Dorman was then sworn, and his attorney asked him to identify her, the district attorney, and the court, and to answer what an appeal is. Dorman gave nonsensical answers. The court then stated that it was more convinced that Dorman was unwilling rather than unable to assist counsel, citing Dorman's reference to recent events in the news. The court also referred to a letter it received from Dorman in December 2012, in which Dorman claimed to be the apostle Matthew, but printed very neatly and everything was spelled correctly, which the court believed was inconsistent with someone who was not thinking straight. The court again expressed its belief that Dorman was unwilling, rather than unable, to assist postconviction counsel.

DISCUSSION

¶5 In *Debra A.E.*, the court discussed the procedures to be employed when there is a question regarding a defendant's competency to assist postconviction counsel. The method of evaluation will vary depending on the

facts and on whether and where the defendant is incarcerated. *Debra A.E.*, 188 Wis. 2d at 132. The court may rely on the affidavits of counsel, a stipulation, the court's observations of the defendant, or may order an examination by a person with specialized knowledge. *Id.* The court may, in its discretion, hold a hearing before determining a defendant's competency. *Id.* This court will uphold the circuit court's determination of a defendant's competency unless the circuit court erroneously exercised its discretion or its decision was clearly erroneous. *State v. Garfoot*, 207 Wis. 2d 214, 223-24, 558 N.W.2d 626 (1997). To warrant reversal, the circuit court's decision must be "totally unsupported by the facts apparent in the record." *Id.* at 224 (quoted source omitted). This standard is utilized because the circuit court is in the best position to observe the defendant's conduct and demeanor. *Id.*

¶6 The record does not support Dorman's argument that the circuit court improperly based its decision on the cost of the evaluation. The court's initial decision to order a competency evaluation was based on expediency. When the court learned that a psychological evaluation was not automatically available, it took a closer look at the evidence and, after conducting the hearing and reviewing Dorman's history, letter, and testimony, determined that Dorman was not unable to assist his attorney. Rather, consistent with Dorman's previous malingering, the court determined that Dorman was unwilling to cooperate with his attorney. The court's discussion of the financial situation merely explains why the court belatedly considered whether a psychological evaluation was needed to address the issue.

¶7 The circuit court properly exercised its discretion when it found insufficient reason to question Dorman's competency. Dr. Kenneth Robbins was

retained by the State to evaluate Dorman in 2011 after Dorman entered pleas of not guilty by reason of mental disease or defect. Robbins provided substantial detail in support of his opinion that Dorman was malingering. Robbins noted the lack of significant psychiatric symptoms in Dorman's mental health history, as well as past mental health evaluators' suspicions that Dorman was malingering. Robbins also relied on a recorded telephone call between Dorman and his girlfriend in which Dorman was "rational, thoughtful and insightful." Robbins concluded that Dorman displayed many of the classic signs of malingering, attempting to make it easy for the examiners by explaining the connection between his delusions and his crimes in a "very thoughtful, rational manner."

¶8 The circuit court also relied on its in-court observations of Dorman. The court noted that, at the time it took Dorman's guilty pleas, the court had "no concerns whatsoever at that time that he understood every single thing we were doing." The court also relied on Dorman's reference to recent events in the news and the lack of any indication from prison authorities that Dorman was having difficulties on a day-to-day basis that might indicate incompetency. Based on these considerations, the court reasonably determined that a psychological evaluation was not necessary because Dorman chose to be unresponsive and uncooperative with his counsel, and not because Dorman was unable to assist his counsel.

¶9 We also reject Dorman's argument that the circuit court failed to make a specific finding that Dorman understood the proceedings. That determination would require the court to repeat the questions Dorman's counsel asked Dorman at the hearing. Because the court found that Dorman's answers to

counsel's questions displayed an unwillingness rather than an inability to assist counsel, no purpose would be served by repeating counsel's questions.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

