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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MARK ALLEGRANZA, *Petitioner,*

v.

THE HONORABLE LAWRENCE KENWORTHY, Judge of the SUPERIOR
COURT OF THE STATE OF ARIZONA, in and for the County of YUMA,
Respondent Judge,

STATE OF ARIZONA ex rel. JON SMITH, Yuma County Attorney, *Real
Party in Interest.*

No. 1 CA-SA 16-0044
FILED 3-24-16

Appeal from the Superior Court in Yuma County
No. CR2012-01043
The Honorable Lawrence C. Kenworthy, Judge

JURISDICTION ACCEPTED; LIMITED RELIEF GRANTED

COUNSEL

Kimerer & Derrick, P.C., Phoenix
By Michael D. Kimerer, Rhonda E. Neff
Counsel for Petitioner

Yuma County Attorney's Office, Yuma
By Rene C. Holmes
Counsel for Real Party in Interest

MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Jon W. Thompson and Judge Maurice Portley joined.

NORRIS, Judge:

¶1 This special action arises out of an order entered by the superior court denying petitioner Mark Allegranza’s motion for “a full [Arizona] Rule [of Criminal Procedure] 11 examination to determine whether [he] truly understands the nature of the proceedings against him and whether he is competent to assist in his defense.” Because Allegranza has no equally plain, speedy, and adequate remedy by appeal, in the exercise of our discretion, we accept special action jurisdiction, *see* Arizona Rule of Procedure for Special Actions 1(a), and grant limited relief as explained below.

FACTS AND PROCEDURAL BACKGROUND

¶2 A grand jury indicted Allegranza in 2012 for allegedly sending sexually oriented text messages to a minor. In 2013, the superior court ordered, pursuant to Allegranza’s motion, a preliminary competency evaluation. A psychiatrist, Jack L. Potts, M.D., evaluated Allegranza, and although he found him competent to stand trial, noted issues relating to his “mens rea and knowingly waiving his rights,” which “may need to be addressed separately.” The superior court then ordered Dr. Potts to conduct another evaluation to determine Allegranza’s mental status at the time of the offense. After Dr. Potts issued a second report, the State requested a full Rule 11 evaluation of Allegranza. The record before us does not reflect the superior court ruled on this request; nevertheless, it ordered another Rule 11 preliminary evaluation by Steven Gray, Ed.D., a psychologist. Dr. Gray also found Allegranza competent to stand trial, but noted he may possibly “suffer[] from Asperger’s disorder.” Based on these preliminary evaluations, the superior court found Allegranza competent to stand trial. Ultimately, Allegranza was convicted pursuant to a plea agreement. In October 2014, the superior court granted post-conviction relief, vacated Allegranza’s convictions and sentences, and set the case against him for retrial.

¶3 After entering the plea agreement, other evaluators diagnosed Allegranza with autism. In 2015, Elizabeth Leonard, Ph.D., a

psychologist, evaluated Allegranza for purposes of a suppression motion and questioned “whether [Allegranza] currently has sufficient present knowledge . . . to provide appropriate assistance to counsel and participate in his own defense.” She recommended “another competency evaluation be undertaken.” Accordingly, Allegranza moved for a full Rule 11 evaluation. The State opposed the request, arguing the superior court had already determined Allegranza was competent to stand trial in 2013. The superior court agreed and denied the Rule 11 evaluation request,¹ as well as Allegranza’s subsequent request that it reconsider its ruling. Allegranza then filed this special action, asking us to reverse the superior court’s order denying his request for a full Rule 11 evaluation. At Allegranza’s request and without objection by the State, we stayed the proceedings in the superior court during the pendency of this special action.

DISCUSSION

¶4 In its response to Allegranza’s special action petition, the State explained:

Respondent read Dr. Gray’s full evaluation containing the lingering questions regarding the possible consequences of Petitioner’s Asperger diagnosis as it related to his competency assessment for the first time upon reviewing the Petition for Special Action. . . . Respondent received a heavily redacted version of the evaluation and had no opportunity to read or consider the limitations prior to the filing of the Petition.

¶5 The State further explained that if it “had known of the existence of the limitations placed on Dr. Gray’s opinion, [it] would not have objected to the trial court reappointing Dr. Gray for him to complete a supplemental evaluation.” The State concluded that given “the qualifications placed upon his opinion, Dr. Gray should be afforded the opportunity to review the evaluations conducted following his competency

¹The superior court also denied a motion to suppress filed by Allegranza based on his alleged inability to waive *Miranda* rights, as stated in Leonard’s report. In denying the motion to suppress, the superior court stated that “[b]ased on the video interview conducted by [the officer] and the reports of Dr. Potts and Gray, together with the remaining record, the court finds the opinions of Dr. Leonard to not be credible.”

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examination and inform the trial court whether that information effects [sic] his conclusion of competency.”

¶6 We view the State’s response as tantamount to an acknowledgement that an updated preliminary Rule 11 evaluation is necessary. Based on the record before us and the State’s response, we agree.

¶7 Under the Arizona procedural and statutory rules governing competency determinations, *see generally* Rule 11 and Arizona Revised Statutes (“A.R.S.”) sections 13-4501 to 4517 (2010 & Supp. 2015), when a party requests a competency determination, the court may first obtain a preliminary examination of the defendant pursuant to A.R.S. § 13-4503(C) to assist it in determining if reasonable grounds exist to order a full competency examination. *See* Rule 11.2(c). If, based on that preliminary examination, the court determines “reasonable grounds” exist to question the defendant’s competency, it may then order a full competency examination, which triggers additional procedural requirements. *See* Ariz. R. Crim. P. 11.2(d), 11.3 to 11.5. In “determining whether further inquiry is required,” the superior court should consider “evidence of a defendant’s irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial.” *Drope v. Missouri*, 420 U.S. 162, 180, 95 S. Ct. 896, 908, 43 L. Ed. 2d 103 (1975). Of course, competency is an “extremely narrow issue,” and the “fact that a defendant suffers from a mental illness, defect, or disability is not, by itself, grounds for finding the defendant incompetent.” *State v. Lewis*, 236 Ariz. 336, 340, ¶ 9, 340 P.3d 415, 419 (App. 2014) (citing A.R.S. § 13-4501(2); Ariz. R. Crim. P. 11.1).

¶8 Here, given the additional evaluations of Allegranza since 2013, the autism diagnosis, and the State’s response to Allegranza’s special action petition, we conclude an updated preliminary evaluation is necessary. Thus, we direct the superior court to order an updated preliminary evaluation so it can then determine whether reasonable grounds exist for a full competency evaluation.

¶9 Allegranza also argues that any “evaluation should not be conducted by Dr. Gray” because “he is not an expert in the area of autism,” and may also be biased on the competency issue because he evaluated him in 2013. The superior court has not considered this issue and should be given a chance to do so. Thus, we express no opinion on whether the court should select Dr. Gray or another expert to conduct the updated preliminary competency evaluation.

CONCLUSION

¶10 For the foregoing reasons, we accept jurisdiction and grant the limited relief discussed above. We direct the superior court to maintain the stay of proceedings currently in place until it has ordered and considered an updated preliminary competency evaluation of Allegranza.



Ruth A. Willingham · Clerk of the Court

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