IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

STANLEY HALL, *Appellant*.

No. 1 CA-CR 15-0633
FILED 4-4-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-001191-001
The Honorable Richard L. Nothwehr, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Adele G. Ponce
Counsel for Appellee

The Heath Law Firm, PLLC, Mesa
By Mark Heath
Counsel for Appellant

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Donn Kessler joined.

C A T T A N I, Judge:

¶1 Stanley Hall appeals his conviction of aggravated assault, raising issues relating to his decision to waive counsel and represent himself. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 On February 5, 2015, Hall stabbed a man outside his apartment complex. A neighbor overheard and recognized Hall's voice at the time of the stabbing; the neighbor stepped out of his apartment and saw Hall running away.

¶3 When police officers arrived, Hall was gone and the back door of his apartment was open. Both the victim and the neighbor identified Hall as the assailant from a photographic lineup.

¶4 Officers discovered that Hall had purchased a bus ticket to San Antonio, Texas the morning after the stabbing. He was arrested in Texas and returned to Arizona to face an aggravated assault charge.

¶5 During an eight-day jury trial, the victim again identified Hall as his assailant. Hall testified, claiming he was not at the apartment complex at the time of the stabbing, and that he had been set up by the apartment owner/manager, who wanted to evict him.

¶6 The jury convicted Hall as charged, and the court subsequently sentenced him to 13 years in prison, with credit for 210 days of presentence incarceration. Hall timely appealed, and we have jurisdiction under Arizona Revised Statutes ("A.R.S.") § 13-4033.[1]

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[1] Absent material revisions after the relevant date, we cite a statute's current version.

DISCUSSION

¶7 Hall argues that the superior court erred by not *sua sponte* ordering a hearing to determine his competency under Rule 11 of the Arizona Rules of Criminal Procedure, and by not *sua sponte* revisiting the court's initial finding that Hall knowingly and voluntarily waived his right to counsel.

¶8 The superior court has broad discretion in determining if reasonable grounds exist for a competency examination and hearing, and we review the court's determination for a manifest abuse of discretion. *State v. Salazar*, 128 Ariz. 461, 462 (1981); *see also State v. Glassel*, 211 Ariz. 33, 44, ¶ 27 (2005). Because Hall did not request a competency evaluation, his allegation that the court should have ordered such a hearing is reviewed under a fundamental error standard. *Cf. State v. Armstrong*, 218 Ariz. 451, 457, ¶ 14 (2008). We similarly review for fundamental error Hall's allegation that the superior court should have revisited its initial finding regarding Hall's waiver of counsel because Hall did not request such a redetermination. *See State v. Henderson*, 210 Ariz. 561, 567, ¶ 19 (2005). Fundamental error is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *State v. Hunter*, 142 Ariz. 88, 90 (1984); *see also State v. Bible*, 175 Ariz. 549, 572 (1993). The defendant bears the burden of establishing "both that fundamental error exists and that the error in his case caused him prejudice." *Henderson*, 210 Ariz. at 567, ¶ 20.

¶9 Shortly after his arrest, Hall requested that he be permitted to represent himself. He cited *Faretta v. California*, 422 U.S. 806 (1975), and noted that he had a constitutional right to represent himself and that he was "knowingly, intelligently, and voluntarily" forgoing counsel. He also filed a motion requesting advisory counsel.

¶10 The court engaged in a short colloquy with Hall regarding his ability to represent himself, as well as the potential dangers of doing so. Hall indicated that he had represented himself before, and neither Hall's appointed defense counsel nor the State opposed the motion, although the prosecutor noted that Hall had a previous guilty-except-insane conviction. The court then engaged in the following exchange with Hall:

> COURT: You understand sir, particularly if you've previously represented yourself, you understand that unlike yourself Mr. Davis [defense counsel] has gone to college, Mr.

> Davis has gone to law school, Mr. Davis has now been practicing I think . . . 10 years . . . . He's been around. I've seen him. I know that he does good work. I know that he's prepared and able to do things. Do you understand that he's qualified?
>
> HALL: I understand exactly what you're saying, Judge. The reason that I'm requesting to represent myself is basically because from the point of arrest in this case to right now I have received no evidence to support the manner in which this arrest was based.
>
> COURT: Okay.

¶11 The court noted that individuals who represent themselves sometimes get so focused on small issues "they forget to see the big picture." The court asked Hall if he understood that a lawyer "should be provided" to help him, and Hall indicated that he did. The court then granted Hall's request to represent himself and appointed attorney Davis to serve as advisory counsel.

¶12 Hall subsequently filed several motions, some of which the court found difficult to understand or unintelligible. Hall alleged repeatedly that staff members at the county jail were thwarting his efforts at self-representation, and that the court should allow him to conduct his defense elsewhere. He apparently also believed that jail personnel were secretly filming him and that they had been sneaking psychotropic medication into his food.

¶13 Hall's defense focused, in part, on an alleged conspiracy against him by his landlord and law enforcement officials. Hall testified to his belief that the manager of his apartment complex had, on multiple occasions, snuck into his apartment and laced his food with psychotropic medication. He believed that this medication "create[d] the desire for a person to use illicit drugs." According to Hall, the manager did this in the hopes that Hall would break the law and thus enable her to evict him. Hall testified that the night of the stabbing he had gone to a local grocery store to buy Gatorade, which would help him fight off the effects of these drugs, and that he was not present at his apartment.

¶14 Twice during trial, Hall revealed information about his mental health history. First, before jury selection began, he suggested that

he had previously been through Rule 11 competency proceedings.[2] Second, Hall testified about time he spent in a state mental hospital. After this second incident, the court excused the jury and warned Hall about the risk of discussing his mental health history in front of the jury. The court held a brief meeting in chambers with Hall's advisory counsel and the prosecutor regarding the proper course of action, and ultimately warned Hall that he should focus his testimony on the events of the night of the stabbing:

> Mr. Hall, when you and I first met it was that first initial pretrial conference and by then you had filed a large number of motions, many of which . . . demanded you be allowed to represent yourself. You and I talked about the representation and I allowed you to represent yourself.
>
> At that time I did not know that you may have had a stay in our state hospital. I did not know that you had been found guilty except insane. I did not know that. Sir, I granted you the opportunity to represent yourself and today I'm still questioning that and what we should do. . . .
>
> [The prosecutor and advisory counsel] both agree they have no suggestions for me. I'm in a position where I have authorized you to be your own lawyer and I'm trying to make sure that you understand that these jurors are watching you and paying attention, but they also want to know what happened on February 5.

¶15 Hall assured the court he would skip a number of questions and get to the point. The court then said:

> Mr. Hall, are we on the same page for a little while? Are you ready to be your own lawyer again and do the things that you can do because I've told you a couple of times, I've watched you and you really do know what you're doing. But I'm concerned when I hear you wanting to tell these jurors

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[2] The record does not show whether Hall underwent Rule 11 proceedings in other cases or the result of any such proceedings. Hall made reference to two prior "Rule 11 convictions," but it was in the context of his explanation for why two of his prior convictions could not be used against him at trial.

> about your stay at the state hospital when no one else could ever bring that out.

¶16 After Hall affirmed that he was going to focus on the events of February 5, the court reiterated: "I watch you at times and you are very good at asking questions, but sometimes I wonder about you and I'm trying to make the decisions. There's nothing I'm going to do except start the trial back up. But my encouragement to you is stay focused on February 5." Hall did not mention his mental health history again.

¶17 A defendant has a constitutional right to waive his right to counsel and defend himself. *Faretta*, 422 U.S. at 807. But such waiver must be made voluntarily, knowingly, and intelligently. *Edwards v. Arizona*, 451 U.S. 477, 482 (1981). A defendant who is mentally incompetent cannot knowingly or intelligently waive his right to counsel. *State v. Doss*, 116 Ariz. 156, 160 (1977). Whether a waiver is knowingly and intelligently made is a question of fact that depends on "the particular facts and circumstances surrounding [the] case, including the background, experience, and conduct of the accused." *Edwards*, 451 U.S. at 482 (citation omitted). A finding that waiver was validly given "is based substantially on the trial judge's observation of the defendant's appearance and actions." *State v. Dann*, 220 Ariz. 351, 358, ¶ 10 (2009).

¶18 Under *Faretta*, the court must warn the defendant of the risks of representing himself before allowing him to proceed without counsel. 422 U.S. at 835. This warning ensures that the defendant "knows what he is doing and his choice is made with eyes open." *Id.* (citation omitted). To proceed without counsel, the defendant "must understand (1) the nature of the charges against him, (2) the dangers and disadvantages of self-representation, and (3) the possible punishment upon conviction." *Dann*, 220 Ariz. at 360, ¶ 24.

¶19 Hall does not challenge the superior court's initial determination that he voluntarily waived his right to counsel and that he was competent to do so. He alleges, however, that the additional information that came to light at trial should have led the court to conduct a hearing to make sure he remained competent to represent himself.

¶20 A defendant is incompetent to stand trial, and thus to represent himself, if he "is unable to understand the proceedings against him" or he cannot "assist in his [] own defense." Ariz. R. Crim. P. 11.1; *see State v. Djerf*, 191 Ariz. 583, 591, ¶ 22 (1998) (noting that the Rule 11 standard also applies when determining a defendant's competence to represent

himself). The superior court is under a continuing duty to monitor a defendant's competence, and must order a competency hearing if "on the basis of the facts and circumstances known to the trial judge, there was or should have been a good faith doubt about the defendant's ability to understand the nature and consequences of the waiver, or to participate intelligently in the proceedings and to make a reasoned choice among the alternatives presented." *State v. Cornell*, 179 Ariz. 314, 322–23 (1994) (citation omitted). A good faith doubt arises when the court is presented with "substantial evidence" of incompetence, including "the existence of a history of irrational behavior, medical opinion, and the defendant's demeanor at trial." *Id.* at 323 (citations omitted).

¶21 Hall asserts that, after he alluded to his possible previous involvement in Rule 11 proceedings and testified about his stay in a state mental hospital, the court should have conducted a new *Faretta* hearing or initiated Rule 11 proceedings. But a court is not necessarily required to revisit a competency determination after discovering that the defendant "was insane at some time in the past." *Cornell*, 179 Ariz. at 322. The defendant's mental health background is only one of many factors that bears on a defendant's competence. *Edwards*, 451 U.S. at 482. Thus, the revelations about Hall's mental health history did not automatically raise doubts about the validity of Hall's waiver, or his competence to represent himself.

¶22 Similarly, Hall's pursuit of a defense based on a conspiracy did not trigger an obligation to question his competence. *See State v. Fayle*, 134 Ariz. 565, 575 (App. 1982) (presentation of a defense that is the "product of [the defendant's] delusion" does not automatically require the court to question his competence); *see also Faretta*, 422 U.S. at 834 (noting that a defendant may "conduct his own defense ultimately to his own detriment"). In *Fayle*, the defendant suffered from a delusion that he had tuberculosis, and attempted to shoot and kill one of several doctors who had refused to diagnose him with the disease. 134 Ariz. at 569. The defendant waived counsel and chose not to pursue an insanity defense, instead defending his actions as being justified. *Id.* at 570–71. The superior court declined on three separate occasions to examine the defendant's competence to represent himself. *Id.* at 574. This court upheld the superior court's decision not to hold a competency hearing because, although the defendant clearly suffered from delusions, he "was in control of his faculties with regard to understanding his constitutional rights, and . . . was competent to make a knowing and intelligent waiver of his right to counsel." *Id.* at 575.

¶23 Here, there is no indication that Hall lacked control of his faculties to an extent that would necessarily require revisiting his waiver or his competency. For example, Hall made several relevant objections during trial, many of which were sustained. *See State v. Conde*, 174 Ariz. 30, 33 (App. 1992). The court also ruled in Hall's favor regarding a proposed jury instruction. Even when the court briefly excused the jury to address Hall's pursuit of an improper line of questioning, the court noted that Hall was "an intelligent individual" who seemed to know what he was doing. And Hall followed the court's directive to avoid further discussing his mental health history in front of the jury. Despite his misguided defense strategy, Hall's performance at trial did not require the court to inquire into his competence. *See Cornell*, 179 Ariz. at 323.

¶24 We also note that Hall's advisory counsel, who was with Hall prior to his waiver of counsel and throughout trial, did not question Hall's competence. That fact lends support to the court's decision to allow Hall to continue to represent himself. *See id.* (noting that the defendant's advisory counsel never questioned the defendant's competence).[3]

¶25 Finally, Hall argues that the court should have treated him as a "gray-area defendant" under *Indiana v. Edwards*, 554 U.S. 164, 173 (2008), and not allowed him to represent himself. There, the United States Supreme Court held that a state may "insist upon representation by counsel for those competent enough to stand trial . . . but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." *Id.* at 178. However, in *State v. Gunches*, 225 Ariz. 22 (2010), the Arizona Supreme Court declined to apply this higher standard to a defendant who claimed the trial court had wrongly allowed him to represent himself. The *Gunches* court recognized that while *Edwards* allows a state to deny a gray-area defendant's request to represent himself, "[i]t does not give such a defendant a constitutional right to have his request for self-representation denied." *Id.* at 25, ¶ 11.

¶26 Given Hall's acknowledgment that the initial determination that he was competent to represent himself was not error, and given affirmative evidence of his ability to do so, he has not established a basis for setting aside his conviction. Hall's mental illness was not so severe that he

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[3] As Hall correctly notes, a claim that counsel was ineffective for not raising a competency issue cannot be raised on direct appeal and must instead be pursued in a post-conviction proceeding under Rule 32 of the Arizona Rules of Criminal Procedure. *See State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9 (2002); *see also State v. LaGrand*, 152 Ariz. 483, 486 (1987).

was "unable to carry out the basic tasks needed to present his own defense without the help of counsel." *Edwards*, 554 U.S. at 175–76. And although the superior court expressed some misgivings about Hall's self-representation, the court noted on several occasions that Hall appeared to know what he was doing. Given the deference owed to the court's first-hand assessment of a defendant's continuing ability to represent himself, we cannot say that the court abused its discretion by not *sua sponte* ordering a competency proceeding and by allowing Hall to continue to represent himself.

CONCLUSION

¶27 For the foregoing reasons, we affirm Hall's conviction and sentence.

AMY M. WOOD • Clerk of the Court
FILED: AA