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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

STATE OF ARIZONA, *Appellee*,

v.

BRONSON HARVEL, *Appellant*.

No. 1 CA-CR 20-0256
FILED 9-30-2021

Appeal from the Superior Court in Maricopa County
No. CR2016-160245-001
The Honorable Dean M. Fink, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Eric Knobloch
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Kevin D. Heade
Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Kent E. Cattani delivered the decision of the Court, in which Judge Samuel A. Thumma and Judge Brian Y. Furuya joined.

C A T T A N I, Chief Judge:

¶1 Bronson Craig Harvel appeals his conviction of second-degree murder. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 On December 27, 2016, Harvel called 911 to report that he “assassinated” his mother, L.W. When police officers arrived, they observed evidence of a struggle and located L.W.’s body in the master bedroom. L.W. had a total of 36 stab wounds and had suffered blunt force trauma to the head. She died at the scene from the multiple sharp force injuries. Harvel admitted to repeatedly beating and stabbing L.W. using a frying pan and various kitchen knives. Harvel had a history of schizophrenia and other psychiatric illnesses, and he had returned home from court-ordered treatment just days before. Harvel was arrested, and the State charged him with one count of first-degree murder.

¶3 In July 2017, the superior court initiated a competency proceeding at defense counsel’s request. *See* Ariz. R. Crim. P. 11. Three psychologists examined Harvel in August and October 2017. All three reported that Harvel was receiving treatment and prescribed psychotropic medications, and all three indicated that Harvel complained of or responded to auditory hallucinations and reported complications when housed with cellmates. Two of the psychologists found Harvel competent, reporting that he demonstrated an understanding of legal proceedings and appeared largely asymptomatic. The third psychologist found Harvel incompetent, although noting a possibility that he was feigning his psychosis and recommended a brief period of restoration to screen for possible malingering. In December 2017, after considering the psychological reports, the superior court found Harvel competent to stand trial.

¶4 In May 2018, the superior court initiated a second competency proceeding, again at defense counsel’s request. Three new psychologists

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evaluated Harvel between June and August 2018. Two of the psychologists found Harvel to be competent, reporting that he refused to cooperate, appeared to exaggerate cognitive impairments, and behaved in a manner indicative of malingering. The third psychologist also reported that Harvel refused to cooperate in the evaluation in any meaningful way but, based on his psychiatric records and refusal to cooperate, found him to be incompetent but restorable – noting, however, that Harvel’s behavior could be feigned and that restoration would be the “conservative approach.” All psychologists indicated that Harvel remained relatively compliant with his medications but continued to complain of hallucinations. After considering all the psychological reports, the superior court found Harvel competent to stand trial.

¶5 In March 2019, defense counsel requested a third competency proceeding, specifically noting that Harvel refused to meet with an expert to explore a guilty except insane defense. Without ruling on the request, the superior court advised Harvel of the importance of meeting with the expert to assist in his defense. At subsequent pretrial conferences, defense counsel confirmed that Harvel had cooperated, but counsel had chosen not to pursue a guilty except insane defense.

¶6 In January 2020, defense counsel orally requested a third competency proceeding. Without ruling on the request, the superior court appointed a clinical liaison to assess and report on Harvel’s status. The clinical liaison met with Harvel at the end of the month and reviewed his psychiatric records, which indicated that Harvel had begun refusing medication in October 2018. Nonetheless, the clinical liaison described Harvel as “oriented to person, place, and his current situation,” showing no overt signs of hallucinations, and recommended medication monitoring.

¶7 In early February 2020, at the final pretrial conference, the superior court asked Harvel a series of competency-related questions. Harvel stated that he understood the nature of the proceedings and did not need a third competency evaluation. The superior court denied defense counsel’s request for a third competency proceeding, noting prior findings of competency, the clinical liaison’s report, and the court’s own observations of Harvel’s demeanor and ability to answer questions.

¶8 The day before trial, in mid-February 2020, Harvel was transferred to the psychiatric unit with all but a blanket removed from his cell, apparently following conflict with a cellmate. Harvel refused to be transported for the first day of trial. When he appeared in court the second day of trial, defense counsel asked to suspend jury selection to evaluate

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Harvel's custodial status and medication compliance. Harvel stated that he understood the nature of the proceedings and the importance of attending trial but that appearing in court caused him physical pain and he wanted to return to the psychiatric unit. Harvel confirmed that he was taking his medication. After a colloquy, in which the court reviewed Harvel's understanding of the proceedings and also explained the potential benefits and importance of being present at trial, the court found Harvel competent and permitted him to voluntarily absent himself. Harvel did not appear for the next four days of trial.

¶9 On the seventh day of trial, Harvel appeared in court to testify. The parties received the updated clinical liaison report. Defense counsel raised concerns regarding Harvel's complaints of hallucinations, changes in his medication, and a recently filed petition for court-ordered evaluations. The superior court asked Harvel competency-related questions, to which Harvel responded that he understood the nature of the proceedings, had conferred with counsel, and wished to provide testimony. Harvel confirmed that he was medication compliant, repeating that he felt "fine." The superior court found Harvel competent to proceed based on his demeanor and ability to answer questions. With direction from defense counsel, Harvel provided his testimony without any significant issues. Harvel explained to the jury that he took L.W.'s life because he was over-medicated, felt out of control, and believed she meant him harm.

¶10 The final day of trial in late February 2020, Harvel did not appear in court, but he met with the clinical liaison. The clinical liaison reported that Harvel appeared stable even though he complained of hallucinations, was "oriented to person, place, and his current situation," and remained medication compliant (by self-report and according to medical records). That day, the jury found Harvel guilty of the lesser-included offense of second-degree murder and found multiple aggravating circumstances.

¶11 The clinical liaison again met with Harvel in March and April 2020, reporting that Harvel appeared well-oriented. The liaison reviewed Harvel's psychiatric records from February through April 2020 and noted that (1) a petition for court-ordered evaluations was filed before Harvel testified at trial; (2) evaluations occurred in March 2020 and a decision had not been reached; (3) Harvel remained largely medication compliant in February and March 2020 with more refusals occurring in April 2020; and (4) psychiatric professionals had reported that Harvel appeared stable and prone to exaggerating symptoms of psychosis.

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¶12 At sentencing, defense counsel did not address the clinical liaison's post-verdict reports or raise concerns regarding Harvel's competency, except to argue that his psychiatric history constituted a mitigating factor. Harvel appeared in court, noted his desire to appeal his conviction, and repeated claims asserted in his trial testimony. The superior court sentenced Harvel to a maximum term of 25 years' imprisonment. Harvel timely appealed, and we have jurisdiction under A.R.S. § 13-4033(A)(1).

DISCUSSION

¶13 Harvel argues the superior court erred by denying his request for a third competency proceeding. We review a determination of competency for an abuse of discretion, considering the facts in the light most favorable to sustaining the ruling. *State v. Glassel*, 211 Ariz. 33, 44, ¶ 27 (2005).

¶14 A defendant has a due process right not to be tried or convicted while incompetent. *Bishop v. Superior Court*, 150 Ariz. 404, 406 (1986) (citing *Drope v. Missouri*, 420 U.S. 162, 172 (1975)). A defendant is deemed incompetent to stand trial if, due to mental illness, he is unable to understand the proceedings against him or assist in his defense. See Ariz. R. Crim. P. 11.1(a)-(b). The competency inquiry "focuses on an extremely narrow issue: whether whatever is afflicting the defendant has so affected his present capacity that he is unable to appreciate the nature of the proceedings or to assist his counsel in conducting his defense." *State v. Steelman*, 120 Ariz. 301, 315 (1978). If the superior court finds a defendant to be competent to stand trial, the matter must proceed to trial without delay. See Ariz. R. Crim. P. 11.2(e), 11.5(b)(1).

¶15 When a superior court has already found a defendant competent to stand trial, "there must be some reasonable ground to justify another hearing on facts not previously presented to the trial court." *State v. Contreras*, 112 Ariz. 358, 360-61 (1975); see also Ariz. R. Crim. P. 11.3(a)(2). The superior court has broad discretion to determine whether reasonable grounds merit a new competency proceeding, *State v. Verdugo*, 112 Ariz. 288, 289 (1975), and the court may consider all available information including its observations of the defendant and records from prior competency proceedings. *State v. Moody*, 208 Ariz. 424, 443, ¶ 48 (2004).

¶16 Contrary to Harvel's assertion, the superior court was entitled to consider and rely on records from prior competency proceedings. While undisputed that Harvel suffered from hallucinations and other symptoms

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of schizophrenia, mental illness alone does not render a defendant incompetent to stand trial. *See* Ariz. R. Crim. P. 11.1(b); *see also* *State v. Evans*, 125 Ariz. 401, 403 (1980). Harvel consistently complained of hallucinations and an inability to be housed with cellmates, regardless whether he was taking medication. Such ongoing symptoms were considered by psychologists in the prior competency proceedings, and the superior court could consider those findings in reaching its conclusion. *See* *State v. Messier*, 114 Ariz. 522, 526–27 (App. 1977) (affirming denial of second competency proceeding when the “motion recited essentially the same facts as its predecessor”). Similarly, the superior court also properly relied on updated information, including its own observations and information provided by the clinical liaison throughout the trial. *See* *Moody*, 208 Ariz. at 443, ¶ 48.

¶17 Relying heavily on federal case law, Harvel argues that changes to his custodial status and psychiatric treatment during trial constituted reasonable grounds for a third competency proceeding. But although there was evidence that Harvel was distressed in the early stages of trial, the clinical liaison had reported that Harvel was well-oriented and had benefited from new medication. After Harvel’s placement in the psychiatric unit, records indicated he appeared stable with a tendency to exaggerate symptoms. Prior to testifying, Harvel responded appropriately to competency-related questions and avowed to being medication compliant. Although Harvel required guidance from defense counsel, he provided coherent testimony and ultimately avoided the greater offense of first-degree murder. While regular attendance at trial is generally in a defendant’s best interests, the test for competency is “not whether defendant acted in his own best interests, but whether he possessed the ability to make a reasoned choice and to understand the consequences of that decision.” *See* *State v. Brewer*, 170 Ariz. 486, 495 (1992). On multiple occasions, Harvel confirmed he understood the nature of the proceedings, made reasoned choices, and knew the consequences of those choices. Thus, despite the changes in Harvel’s custodial status and treatment and his need for additional guidance in testimony, the record supports the superior court’s assessment of Harvel’s competency based on his ongoing ability to grasp the nature of the proceedings and assist defense counsel. *See* *Steelman*, 120 Ariz. at 315; *Verdugo*, 112 Ariz. at 289.

¶18 Harvel has not shown that the superior court abused its discretion by denying his request for a third competency proceeding. Accordingly, Harvel has not established error, structural or otherwise.

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CONCLUSION

¶19

We affirm Harvel's conviction and the resulting sentence.



AMY M. WOOD • Clerk of the Court
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