IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

KING NATHANIEL RAFFAEL YATES,
Appellant.

No. 2 CA-CR 2020-0101
Filed March 15, 2022

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20172548001
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Amy Pignatella Cain, Assistant Attorney General, Tucson
Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Eppich and Chief Judge Vásquez concurred.

S T A R I N G, Vice Chief Judge:

¶1 King Yates appeals his conviction and sentence for first-degree murder. For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against Yates. *See State v. Felix*, 237 Ariz. 280, ¶ 30 (App. 2015). In November 2016, Yates and his wife, C.Y., visited their neighbor, T.N. When T.N. received a phone call, she stepped into her bedroom for about forty-five minutes, leaving Yates and C.Y. in the living room of the apartment. Toward the end of the call, T.N. heard a "loud pop." After ending the call, T.N. encountered Yates immediately outside her bedroom door, and saw C.Y. on her kitchen floor with a pool of blood "behind her." While he was still in her apartment, T.N. observed Yates cleaning a gun. It was later determined that C.Y. had died of a gunshot wound to the head.[1] Yates was initially charged with first-degree murder, criminal trespass, and possession of a deadly weapon by a prohibited possessor. Subsequently, the trial court severed the weapon charge, and ultimately granted the state's motion to dismiss the trespass charge.

¶3 Before trial, Yates's attorney filed a motion to withdraw, which the trial court granted, finding Yates "literate, competent, and ha[ving] an understanding of what his obligations" would be. Accordingly, the court allowed Yates to represent himself. At a subsequent hearing, however, the court appointed advisory counsel, and based on Yates's "erratic behavior, . . . agitation, . . . apparent inability to follow the Court's instructions or modulate his behavior, . . . mood swings, . . . delusions[,] . . . history of mental illness, [and] lack of being prescribed any psychotropic

[1]When police officers later arrested Yates, whom they found sleeping in a vacant residence, the gun that had been used to kill C.Y. was found in a chest of drawers in the room where they had detained him.

medications," ordered Yates to undergo examinations to determine his competency to stand trial pursuant to Rule 11.2, Ariz. R. Crim. P. The court ultimately found Yates incompetent to stand trial, but restorable, indicating it wished to examine "the status of possible medication" for Yates.

¶4 Thereafter, the trial court held a hearing to "determine if . . . Yates . . . met the criteria set out in *Sell* [*v. United States*, 539 U.S. 166 (2003)] for involuntary [antipsychotic] medication" administered to restore competency. Finding the criteria satisfied, the court ordered the Pima County Restoration Program to proceed with such medication. Following additional Rule 11 proceedings, approximately one year later, Yates was found "presently competent to stand trial." And, about two months before trial, the court ordered that Yates no longer required involuntary medication for purposes of competency. The court also reiterated that Yates had properly waived his right to counsel and that he would be provided advisory counsel. Following trial, Yates was convicted as stated above and sentenced to natural life in prison. This appeal followed. We have jurisdiction pursuant to article VI, § 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

Self-Representation

¶5 Yates first argues the trial court erred by allowing him "to proceed pro se and / or by failing to revoke his pro se status." We review a trial court's decision to allow self-representation for an abuse of discretion. *See State v. Ibeabuchi*, 248 Ariz. 412, ¶ 15 (App. 2020); *State v. Dann*, 220 Ariz. 351, ¶ 25 (2009).

¶6 Relying on *Ibeabuchi*, Yates argues he "fit[s] what has become known as a 'gray-area' defendant," meaning although he was competent to stand trial, mental illness nonetheless impaired his ability to effectively represent himself. 248 Ariz. 412, ¶ 16. Moreover, he claims his lack of ability and willingness to "abide by the rules of procedure and courtroom protocol" should have also precluded his right to represent himself. *State v. Gomez*, 231 Ariz. 219, ¶ 8 (2012) (quoting *State v. Whalen*, 192 Ariz. 103, 106 (App. 1997)). Supporting these arguments, he points to several alleged "instances relating to [his] incompetence to conduct his own defense" and the opinions of doctors involved in the case.

¶7 The state primarily responds that no "heightened standard of competency applied" for Yates to represent himself. And it claims the cases Yates relies on for the contrary are distinguishable, merely allowing, rather than requiring, such a heightened standard. Further, the state argues that

even if a heightened standard were required, Yates would have nonetheless met it and been competent to represent himself.

¶8 "[T]he standard for competence to stand trial is whether the defendant has 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding' and has 'a rational as well as factual understanding of the proceedings against him.'" *Godinez v. Moran*, 509 U.S. 389, 396 (1993) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)). But, in *Godinez*, the Supreme Court rejected the "notion that competence . . . to waive the right to counsel must be measured by a standard that is higher than (or even different from) the *Dusky* standard" stated above. *Id.* at 398. Later, in *Indiana v. Edwards*, where the trial court ruled that Edwards was "competent to stand trial but . . . not . . . competent to defend himself," the Court addressed the question of "whether the Constitution required the trial court to allow Edwards to represent himself at trial." 554 U.S. 164, 169 (2008). Ultimately, the Court concluded the constitution permitted states "to insist upon representation by counsel for" gray-area defendants, but did not require states to do so. *Id.* at 178.

¶9 Arizona courts have recognized that the "standard of competence to waive the right to counsel is higher than that required to stand trial."[2] *State v. Mott*, 162 Ariz. 452, 458 (App. 1989) (quoting *State v. Hartford*, 130 Ariz. 422, 424 (1981)). *But cf. State v. Gunches*, 225 Ariz. 22, ¶ 11 (2010) ("[E]ven assuming that Arizona courts would apply a heightened standard of competency for [gray-area] defendants to waive counsel (an issue we need not decide here), we find no error in the trial court's allowing Gunches to represent himself."). "Whether a defendant can make an intelligent waiver depends on the totality of the facts and circumstances of the case," including "any current or past problems relating to mental competency." *Mott*, 162 Ariz. at 458. "The fundamental question then is not one of the wisdom of defendant's judgment but whether the

[2] In *Ibeabuchi*, we solely addressed the question of whether a defendant found competent to stand trial was thus entitled to represent himself. 248 Ariz. 412, ¶ 14. Consistent with *Edwards*, we determined that the trial court was entitled to require Ibeabuchi to proceed with counsel. *Id.* ¶¶ 18, 23. We did not, however, determine whether the court was itself *required* to make such ruling. *See id.* ¶ 19 ("[W]hen a criminal defendant is mentally competent to stand trial, but not mentally competent to conduct that trial or hearing himself, the superior court *may, in its sound discretion*, deny the defendant the right to represent himself." (emphasis added)).

defendant's waiver of counsel was made in an intelligent, understanding and competent manner." *State v. Martin*, 102 Ariz. 142, 146 (1967).

¶10 Assuming without deciding that Arizona law requires such a heightened standard, even following *Godinez*, we nonetheless find no error in the trial court allowing Yates to represent himself. *See Gunches*, 225 Ariz. 22, ¶¶ 11-12. As in *Gunches*, Yates was not a gray-area defendant "unable to carry out the basic tasks needed to present his own defense without the help of counsel," and, based on the totality of the circumstances, he was able to intelligently waive counsel. *Id.* (quoting *Edwards*, 554 U.S. at 175-76); *see Mott*, 162 Ariz. at 458. He was ultimately found competent to stand trial, and the court appointed advisory counsel to assist him. Moreover, Yates had a clearly developed trial strategy that focused on what he saw as the state's inability to meet its burden of proof, including the lack of eyewitnesses to the shooting. Yates cross-examined each of the state's witnesses and conducted opening and closing statements during which he drew the jury's attention to the state's burden of proof and attacked witness credibility, with minimal interruptions from the state or the court. And at the close of the state's case, Yates articulated a motion for judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P.

¶11 Moreover, the record shows Yates was willing and able to follow rules of procedure and courtroom conduct in such a way that the trial court properly allowed him to maintain his self-represented status. *See Gomez*, 231 Ariz. 219, ¶ 8. In *Gomez*, the defendant "demonstrated over several years that he could not comply with court deadlines and the disclosure rules" despite repeated warnings "that his noncompliance could result in loss of pro per status." *Id.* ¶ 16. Yates, however, only points to his refusal to sign the waiver of counsel form and other "unruly conduct," including instances where he argued with the court, was disruptive, repeatedly asked irrelevant questions, and used harsh language. While Yates's conduct—actions not wholly confined to self-represented litigants—may at times have been a source of frustration for the court and others involved in the trial, we cannot conclude that it so "undermine[d] the court's authority and ability to conduct the proceeding in an efficient and orderly manner" that Yates should have been denied the right of self-representation. *Id.*

¶12 Thus, we conclude the trial court did not abuse its discretion in allowing Yates to represent himself at trial. *Cf. State v. Riley*, 248 Ariz. 154, ¶ 7 (2020) ("An abuse of discretion occurs when 'the reasons given by

the court for its action are clearly untenable, legally incorrect, or amount to a denial of justice.'" (quoting *State v. Chapple*, 135 Ariz. 281, 297 n.18 (1983))).

Involuntary Medication

¶13 Yates next argues "the trial court erred . . . by ratifying compelled medication." Specifically, he claims, pursuant to the standards in *Sell*, that the evidence "was insufficient to legally support [his] compelled medication." However, the state counters that "because Yates was required to raise his forced administration of medication claim in a petition for special action, and because [he] was under no court order to take the medication at the time of trial, [his] claim is now moot." We agree.

¶14 "As a general rule, this Court will not examine moot questions unless they present issues of great public importance or they are likely to recur." *State v. Henderson*, 210 Ariz. 561, n.2 (2005). A claim is moot if it concerns "issues which no longer exist because of changes in the factual circumstances." *ASH, Inc. v. Mesa Unified Sch. Dist. No. 4*, 138 Ariz. 190, 191 (App. 1983). Here, as stated above, Yates was not under forced medication at the time of trial. Thus, we cannot say any purported error in requiring the medication would entitle him to relief in this court. *See State v. Escalante*, 245 Ariz. 135, ¶¶ 21, 29-30 (2018) (to require reversal on appeal, error must have been able to affect verdict or sentence or made it impossible for the defendant to have received a fair trial).[3] Further, the appropriate avenue

[3]In the conclusion section of his opening brief, Yates states,

> This legal error may have contributed to the manifest mental deterioration of the Appellant's mental state, which in turn impeded his opportunity for a fair trial. It also represents a violation of the Appellant's fundamental rights notwithstanding any provable direct effects on the conduct of the defense itself, and comprises reversible structural error on its own.

To the extent he claims the forced medication was reversible error for these reasons, he has waived this argument due to insufficient briefing, and we do not address it further. *See* Ariz. R. Civ. App. P. 13(a)(7) (opening brief must include argument with "supporting reasons for each contention . . . and . . . citations of legal authorities and appropriate references to the portions of the record on which the appellant relies"); *State v. Bolton*, 182

for review here would have been a petition for special action relief. *See Wolf v. Kottke*, 248 Ariz. 319, ¶¶ 4-6 (App. 2020) (defendant challenging forced medication via special action "had no equally plain, speedy and adequate remedy by appeal").

Disposition

¶15 For the foregoing reasons, we affirm Yates's conviction and sentence.

Ariz. 290, 298 (1995) ("Failure to argue a claim on appeal constitutes waiver of that claim.").