

Cite as 2010 Ark. App. 456

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR09-1305

CECIL ALLEN BAYLESS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 2, 2010APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NOS. CR-2006-286; CR-2008-257]HONORABLE PHILLIP T.
WHITEAKER, JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Cecil Allen Bayless appeals the judgment and commitment order entered by the Lonoke County Circuit Court revoking his probation and sentencing him to forty-eight months' imprisonment. He contends that there is a lack of substantial evidence supporting the trial court's finding that he was competent for his revocation hearing. *We affirm.*

In May 2007, Bayless pled guilty to first-degree terroristic threatening, second-degree battery, first-degree criminal mischief, public intoxication, fleeing, and disorderly conduct. He was sentenced to sixty months of probation, ordered to pay a fine, court costs, fees, and required to attend alcohol counseling. In November 2007, the State filed a petition to revoke Bayless's probation, alleging that he failed to report to his probation officer, committed six new crimes, consumed alcohol until intoxicated, tested positive for marijuana, lied to his probation officer about drug use, and failed to pay fines and court costs. Bayless pled guilty to the revocation

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allegations. On February 4, 2008, another judgment and commitment order was entered, listing the May 2007 crimes along with the November 2007 crimes. This order sentenced Bayless to a new term of probation identical to the November 2007 probation sentence.

On May 23, 2008, the State filed a second petition to revoke, alleging that Bayless committed three new crimes, used alcohol until intoxicated, possessed a weapon, and failed to pay fines and court costs. At the request of counsel for Bayless, a notice for a forensic mental evaluation to be performed by Dr. Paul Deyoub was entered by the trial court. Dr. Deyoub, in his report, diagnosed Bayless with alcohol abuse; methamphetamine abuse (in remission); cannabis abuse (in remission); schizoaffective disorder—bipolar type; and antisocial personality disorder. Dr. Deyoub concluded that Bayless, at the time of the examination, had the capacity to understand the proceedings against him and had the capacity to assist effectively in his own defense. Dr. Deyoub further concluded that, should the fact finder determine that Bayless committed the charged offenses, at the time of the alleged conduct Bayless had a mental disease, but not a mental defect; had the capacity for the culpable mental state; had the capacity to appreciate the criminality of his conduct; and had the capacity to conform his conduct to the requirements of the law.

For a second expert opinion, Bayless hired Dr. Bob Gale, who made diagnoses similar to those of Dr. Deyoub—schizoaffective disorder—bipolar type, attention-deficit-hyperactivity disorder, alcohol-dependence disorder (by history), amphetamine dependence (by history), cognitive disorder, antisocial-personality disorder, and organic central-nervous-system disease. Like Dr. Deyoub, Dr. Gale concluded that Bayless had a sufficient understanding of the criminal

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charges against him and the upcoming proceedings. However, Dr. Gale concluded that Bayless had only intermittent and partial capacity to effectively assist counsel in his own defense. Dr. Gale further opined that should the fact finder conclude that Bayless committed the charged offenses, he did have substantial major mental disease and mild mental defect; he lacked the capacity for the culpable mental state; he lacked the capacity to fully appreciate the criminality of his conduct; and he lacked the capacity to conform his conduct to the requirements of the law.

A competency hearing was held on April 27, 2009. Drs. Deyoub and Gale testified consistent with their reports. Bayless's mother also testified. At the conclusion of the hearing, the trial court found that Bayless was competent to proceed and that he had the capacity to appreciate the criminality of his conduct. Thereafter, a revocation hearing was held, and the trial court found that Bayless violated the conditions of his probation.

Bayless's sole point on appeal is that there is a lack of substantial evidence supporting the trial court's finding that he was competent for his revocation hearing. On appeal, we affirm where there is substantial evidence to support the trial court's findings concerning a defendant's fitness to proceed. *Smith v. State*, 282 Ark. 535, 537, 669 S.W.2d 201, 203 (1984). Substantial evidence is evidence of sufficient force and character to compel a conclusion of reasonable and material certainty. *Id.*, 669 S.W.2d at 203.

It is recognized that the conviction of an accused while he is legally incompetent to stand trial violates due process. *Lawrence v. State*, 39 Ark. App. 39, 43, 839 S.W.2d 10, 13 (1992). Thus, Arkansas Code Annotated section 5-2-302 (Repl. 2006) provides that no person who, as a result

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of mental disease or defect, lacks the capacity to understand the proceedings against him or to assist effectively in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures. *Lawrence*, 39 Ark. App. at 44, 839 S.W.2d at 13. However, a defendant in a criminal case is ordinarily presumed to be mentally competent to stand trial. *Id.*, 839 S.W.2d at 13. The test of competence to stand trial is whether an accused has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as factual understanding of the proceedings against him. *Id.*, 839 S.W.2d at 13.

In this appeal, Bayless highlights Dr. Gale's opinions and criticizes those of Dr. Deyoub. Bayless contends that Dr. Deyoub does not "point to any specific traits or characteristics that support his belief." He argues that Dr. Deyoub admitted that Bayless had been in treatment for mental disorders and had been diagnosed with mental conditions. Finally, he points out that Dr. Deyoub did not contact any of Bayless's family members, did not review any of his employment or educational records, and was not aware of his closed-head injuries.

The trial court's decision on competency requires an evaluation of the weight to be given the testimony, particularly when expert opinions are involved. *Lipscomb v. State*, 271 Ark. 337, 339, 609 S.W.2d 15, 17 (1980) (affirming the finding of a defendant's competency to stand trial despite conflicting expert opinions because there was substantial evidence to support it). When a trial court has determined that a defendant is competent to stand trial, we will affirm if there is substantial evidence to support the trial court's finding. *Jones v. State*, 317 Ark. 131, 136, 876 S.W.2d 262, 265 (1994). "There will be no attempt to weigh the evidence or pass on the

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credibility of witnesses when the medical reports conflict with each other.” *Id.*, 876 S.W.2d at 265.

We hold that Dr. Deyoub’s report and testimony were substantial evidence supporting the trial court’s finding that Bayless understood the charges against him and could assist his counsel. Dr. Deyoub testified that he conducted IQ testing of Bayless in August 2006. His full-scale IQ was 84, which Dr. Deyoub concluded showed no cognitive deficit. Dr. Deyoub also testified that Bayless “responded well under the Competency to Stand Trial Assessment Instrument.” Dr. Deyoub’s 2008 report reflected that during the test, Bayless said that “the judge keeps the lawyers in line,” and “the prosecuting attorney tries to prove you guilty if he has the proof.” He also said that he understood that he was the defendant, that “witnesses tell what they have seen,” and that they “are supposed to tell the truth.” Bayless added that “the jury should look at all the facts and make a decision.” Based on this test, Dr. Deyoub concluded in his report that Bayless had “a pretty good understanding of the judicial system.” Dr. Deyoub testified that he was aware of Bayless’s prior mental health issues and confirmed that he suffered from mental disorders, but testified that “[Bayless] had competence even in spite of his mental disease. The threshold for competence is relatively low and he passed that easily on the day I examined him for competence.” Based on this evidence, we cannot say that the trial court erred in finding that Bayless was competent. Accordingly, we affirm.

Affirmed.

HART and BROWN, JJ., agree.