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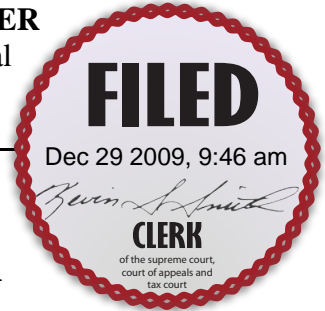
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**IN THE  
COURT OF APPEALS OF INDIANA**

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BRUCE ANDERSON,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 53A01-0903-CR-122

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APPEAL FROM THE MONROE CIRCUIT COURT  
The Honorable Kenneth G. Todd, Judge  
Cause No. 53C03-0807-CM-3035

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**December 29, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Bruce Anderson was convicted of criminal trespass<sup>1</sup> as a Class A misdemeanor after a jury trial and was sentenced to 360 days with 194 days suspended. He appeals, raising several issues of which we find the following dispositive: whether he was denied the effective assistance of his trial counsel when counsel failed to either move for an evaluation of Anderson's competency to stand trial or to raise the defense of mental disease or defect.

We reverse.

### **FACTS AND PROCEDURAL HISTORY**

On June 20, 2008, Anderson went to Woodburn Hall at Indiana University ("I.U.") in Bloomington, Indiana. It was Friday afternoon, and few people were present in the building. Once inside, he encountered Darla Martin and asked her for directions to the office of the chair of the political science department. Martin gave Anderson directions and left him. A few minutes later, she encountered Anderson again, and he expressed anger because he believed that she had given him incorrect directions. Martin then went to get a member of the administrative staff to speak to Anderson. During this time, Anderson's demeanor ranged between agitated and calm, and he engaged in a rambling, disjointed conversation. He also made a statement to the effect that, "this is why Columbine and Virginia Tech happened." *Tr.* at 128. Based on this, Martin went to get another staff member. Eventually, yet another staff member was able to calm Anderson and persuade him to leave. The staff members called the I.U. Police Department and reported the incident.

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<sup>1</sup> See Ind. Code § 35-43-2-2(a)(1).

On June 24, 2008, two I.U. police officers went to Anderson's apartment and verbally informed him that he was not to enter onto the property of I.U. again and, that if he did so, he would be trespassing. During his conversation with the officers, Anderson again engaged in a convoluted, rambling exchange. One of the officers later mailed a letter to Anderson reiterating that Anderson was not to enter onto I.U. property.

On July 29, 2008, Anderson again entered Woodburn Hall and went to the offices of the political science department. While he was initially calm, Anderson became agitated and was apparently angry that the police had contacted him regarding the first incident. The staff again called the I.U. Police Department. The responding officer was unable to locate the trespass warning from the June incident on the computer, so she merely ordered him to leave the building. The officer later found a record of the warning, and Anderson was arrested.

The State charged Anderson with criminal trespass as a Class A misdemeanor. At his initial hearing, Anderson indicated to the trial court that he understood the charges and his rights. He also stated that he was not currently taking his medication for post-traumatic stress disorder and that the emotional disturbance sometimes made it difficult to understand the proceedings and that "I hear about every third word, and catch three words from last month . . . ." *Id.* at 6-7. When asked whether he understood that the State had to prove the elements of the crime beyond a reasonable doubt, Anderson responded, "That will be interesting to see Mr. Mike Sodrell's [sic] office, the congressman being here for this." *Id.* at 4.

At his bond review hearing, in response to the trial court's chiding that he could

not go around scaring people to get their attention, Anderson began a disjointed narrative about I.U. students shoving cameras in his face, setting off fireworks near his girlfriend's house, shooting him with water guns, and making obscene remarks. He also again made reference to trying to address his concerns at the office of former Congressman Mike Sodrel and being treated rudely because students were watching a loud soccer game. *Id.* at 18-19.

At a pretrial conference, the State requested that Anderson submit to a mental health evaluation as a condition of pretrial release, which he refused to do. In response to an inquiry as to why he refused to submit to such an evaluation, Anderson stated, "Either my word is what it is and can be held as what I say here or there. I will not subject myself to the ridicule of having somebody question me and then whatever." *Id.* at 23. He also again talked about I.U. students and Mike Sodrel's office. At another pretrial conference, the State again requested that Anderson submit to a mental health evaluation to determine if he posed a threat to the community, and he again refused. Anderson then continued on a rambling discussion, which contained references: to being called a malingerer; to the death of his child "who died of the same kind of illness problems that I had," *id.* at 28; to quitting taking his medication due to "multiple chemical sensitivity problems," *id.* at 29; about his military service, and to "having neuro-psychiatric problems as well as neuro-muscular seizures, skin problems, you name it, blacking out in the middle of running, stop [sic] being able to eat, all kinds of different things." *Id.* at 32-33. At one point, Anderson's trial counsel stated that he was going to file a motion for psychiatric evaluation, but he did not do so.

On the day of his trial, the trial court commented that Anderson had refused to participate in a mental health evaluation, and Anderson agreed. After the trial court stated that it wanted the trial to go smoothly, Anderson stated:

Sometimes I hear it all . . . . I'm going to explain something to you so you try to understand. Sometimes I hear your voice and what I hear is blah, blah, blah, and I'll hear about every five or six words and sometimes I catch a part of the last conversation in mid-sentence. And it makes it hard for me to try to remember the memory that I'm trying to remember to keep the information straight and communicate at the same time because I can't . . .  
[.]

*Id.* at 53. The trial court told Anderson that if he did not understand something, he should bring it to the attention of his attorney. During the trial, every witness called by the State testified as to Anderson's incoherence, signs of confusion, agitation, and rambling speech while at the political science department. When Anderson testified, he stated that he thought he had a right to go to Woodburn Hall on July 29. His explanation as to why he believed this included a long, rambling narrative about filing a congressional inquiry through Mike Sodrel's office regarding VA benefits, his child who had "neuro-psychiatric, neuro problems at eleven months of age," *id.* at 182, his paycheck being sent to a "Marine's wife in Puerto Rico," *id.*, and having a problem with the county commissioner. The rest of his testimony consisted of more non-responsive, rambling narratives regarding why he went to Woodburn Hall and why he believed he had a right to go there. At the conclusion of the trial, the jury found Anderson guilty of criminal trespass as a Class A misdemeanor. He was sentenced to 360 days with 194 days suspended. Anderson now appeals.

## DISCUSSION AND DECISION

Anderson contends that he received ineffective assistance of his trial counsel. We review ineffective assistance of trial counsel claims under the two-prong test set out in *Strickland v. Washington*, 466 U.S. 668 (1984). *Fisher v. State*, 878 N.E.2d 457, 463 (Ind. Ct. App. 2007), *trans. denied* (2008). First, the petitioner must demonstrate that counsel's performance was deficient, which requires a showing that counsel's representation fell below an objective standard of reasonableness and denied the petitioner the right to counsel guaranteed by the Sixth Amendment to the United States Constitution. *Timberlake v. State*, 753 N.E.2d 591, 603 (Ind. 2001), *cert. denied* (2002). Second, the petitioner must demonstrate that he was prejudiced by counsel's deficient performance. *Id.* To show prejudice, a petitioner must show that there is a reasonable probability that the outcome of the trial would have been different if counsel had not made the errors. *Id.* A probability is reasonable if it undermines confidence in the outcome. *Id.*

We presume that counsel rendered adequate assistance and give considerable discretion to counsel's choice of strategy and tactics. *Smith v. State*, 765 N.E.2d 578, 585 (Ind. 2002). "Isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective." *Id.* "If we can resolve a claim of ineffective assistance of counsel based on lack of prejudice, we need not address the adequacy of counsel's performance. *Fisher*, 878 N.E.2d at 463-64.

Anderson argues that his trial counsel was ineffective both for failing to move for a competency evaluation and hearing and for failing to raise a defense of mental disease

or defect. He specifically contends that these failures by his trial counsel caused his representation to fall below an objective standard of reasonableness and denied him his right to counsel guaranteed under the Sixth Amendment. He further claims that he was prejudiced by these deficiencies because had his trial counsel either made the motion or raised the defense, there was a reasonable probability that the outcome of his trial would have been different. He alleges that if his counsel had moved for a competency hearing, there was a reasonable probability that he would have been found incompetent to stand trial and that, if his counsel had raised the defense of mental disease or defect, there was a reasonable probability that he would have been found not guilty.

Here, the record is replete with instances in which Anderson's actions raised questions about his mental capacity. In his pretrial hearings, Anderson told the trial court that his mental state sometimes made it difficult for him to understand the proceedings, and he embarked on disjointed, non-responsive answers to questions posed to him. During his trial, witnesses testified as to his agitated state and incoherent behavior while at Woodburn Hall. Additionally, during Anderson's testimony, he engaged in long, rambling and non-responsive narratives when questioned about why he went to Woodburn Hall and why he believed that he had a right to do so.

Effective counsel should have recognized Anderson's mental status and raised such in either a motion to determine competence to stand trial or as a defense of mental disease or defect. Not doing so demonstrated deficient performance by trial counsel as it caused Anderson's representation to fall below an objective standard of reasonableness. Likewise, we conclude that had Anderson's trial counsel either raised a motion for

competency determination or raised the defense of mental disease or defect, there was a reasonable probability that the outcome of the trial would have been different based on the overwhelming evidence of Anderson's mental status contained in the record. Although the State contends that Anderson's statements that he understood the charges against him and the nature of the proceedings demonstrated that his mental status did not affect the outcome of the trial, such a contention is of no moment because of the overwhelming evidence showing otherwise. We therefore believe that Anderson did not receive the effective assistance of his trial counsel and his conviction should be reversed.

Reversed.

NAJAM, J., and BARNES, J., concur.