

RENDERED: MARCH 11, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001208-MR

LARRY REARDON

APPELLANT

v. APPEAL FROM MARION CIRCUIT COURT
HONORABLE DOUGHLAS M. GEORGE, JUDGE
ACTION NOS. 99-CR-00023 & 99-CR-00024

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KELLER, NICKELL, AND STUMBO, JUDGES.

STUMBO, JUDGE: Larry Reardon appeals from the denial of his Kentucky Rules of Criminal Procedure (RCr) 60.02 motion seeking to vacate a twenty-year sentence arising from a 2002 conviction on multiple counts of rape, sexual abuse and witness intimidation. Reardon argues that his due process rights were violated when the trial court failed to order a full psychiatric evaluation prior to Reardon's

guilty plea. We are not persuaded by Reardon's assertion that the record contains substantial evidence of his incompetency, and accordingly find no basis for his claim that the court erred in failing to order a competency hearing prior to trial.

In 1999, the Marion County grand jury indicted Reardon on 80 counts of rape and sexual abuse arising from the allegation that Reardon sexually abused his minor daughters between 1990 and 1999. On November 30, 2000, Reardon, through counsel, filed a motion to suppress any statements allegedly made to the police at the time of his February 12, 1999 arrest on the grounds that such statements were not made as a result of a knowing, intelligent and voluntary waiver of his constitutional right to remain silent and right to counsel. On that same date, Reardon also filed a motion for a competency hearing.

After a series of continuances, delays and rescheduled hearing dates, the motion for a competency hearing was dropped from the court calendar and a suppression hearing was conducted on December 10, 2001. Evidence was adduced at the suppression hearing that Reardon could not read or write, suffered from seizures for about two years prior to his arrest, had a doctor's appointment for nerves and stress at the time of his arrest, and had been struck in the head with an automobile starter one or two days before the arrest.

Apparently prior to the suppression motion being ruled upon, three days later on December 13, 2001, Reardon entered a guilty plea to twenty counts of first-degree rape, fifteen counts of sexual abuse, and ten counts of intimidating a witness. In exchange for the plea, the Commonwealth recommended a total

sentence of twenty years in prison. A judgment of conviction and a sentence of twenty years in prison were rendered on February 13, 2002.

Some seven years later on March 19, 2009, Reardon filed a *pro se* motion seeking Kentucky Rules of Civil Procedure (CR) 60.02 relief from the judgment. As a basis for the motion, Reardon argued that he was incompetent to enter a guilty plea, and that he had suffered the denial of due process rights arising from the court's failure to order a competency hearing. His motion seeking appointed counsel was sustained. Reardon's motion for relief from judgment was denied on May 4, 2009, and this appeal followed.

Reardon now argues that the trial court erred to his substantial prejudice and denied him due process of law when it overruled his motion for CR 60.02 relief without holding an evidentiary hearing. Reardon contends that a movant is entitled to an evidentiary hearing on a CR 60.02 motion if he alleges facts which, if true, would justify vacating the judgment. He maintains that because his CR 60.02 motion asserted that no competency hearing was conducted prior to his guilty plea, the court erred in failing to conduct an evidentiary hearing on the question of whether a competency hearing was conducted. Reardon notes that a criminal defendant may not be tried or convicted while legally incompetent, and that due process requires an evidentiary hearing whenever there is sufficient doubt that the defendant is competent.

Reardon directs our attention to what he contends is substantial evidence in the record sufficient to require a determination of his competency.

That evidence consists of a 1999 order authorizing a neurological screening; a November 30, 2000 motion for a competency hearing and subsequent scheduling of said hearing on March 19, 2001; the court's awareness of his illiteracy¹ and placement in special classes when in school; the court's awareness that he suffered from seizures and dizzy spells, and had a doctor's appointment for symptoms allegedly related to nerves and stress; and, the court's awareness that he had been hit in the head with an automobile starter approximately two days before his arrest. Reardon argues that these factors were sufficient to create an issue of his competency, and that the trial court therefore erred in failing to conduct a CR 60.02 hearing to determine if a competency hearing had been conducted prior to Reardon's guilty plea.

We have closely examined the record and the law on this issue, and find no error. Kentucky Revised Statutes (KRS) 504.100(1) provides that “[i]f upon arraignment, or during any stage of the proceedings, the court has reasonable grounds to believe the defendant is incompetent to stand trial, the court shall appoint at least one (1) psychologist or psychiatrist to examine, treat and report on the defendant's mental condition.” In order for KRS 504.100(1) to apply, the grounds for questioning the defendant's competency must be brought to the attention of the trial court by defense counsel, or be so obvious that the trial court cannot fail to be aware of them. *Gabbard v. Commonwealth*, 887 S.W.2d 547 (Ky. 1994).

¹ Defense counsel stated on the record that Reardon had “difficulty reading and writing.”

The dispositive question, then, is whether there are reasonable grounds in the record for questioning Reardon's competency. If so, Reardon's CR 60.02 motion may entitle him to a determination of whether a competency hearing was conducted. We find no error in the trial court's implicit determination that no reasonable grounds existed to question Reardon's competency. Reardon's original trial counsel requested a neurological examination. For reasons not set out in the record, that request was either dropped or otherwise abandoned. Reardon properly points out that the trial court was made aware of his illiteracy, that he suffered from seizures and dizzy spells, that he had a doctor's appointment for his nerves, and that he had been struck in the head with an automobile starter about two days before his arrest. These factors, taken alone, do not compel us to conclude that reasonable grounds existed at the time of Reardon's plea to question his competency.

At the time of Reardon's plea, he was represented by counsel. Because of Reardon's difficulty reading, the terms of his plea were read to him and fully explained by counsel. Defense counsel noted that though Reardon was taking seizure medication, "I believe that his judgment is clear enough for him to understand what we are doing today." The court then proceeded to discuss with Reardon the terms of his plea, the consequences of entering the plea, and whether Reardon fully understood the effects of the plea. Reardon entered into a dialogue with the court, and answered affirmatively each time he was asked if he understood the plea and its consequences.

When considering the totality of the record, including defense counsel's statement that Reardon was able to understand the plea, as well as Reardon's full participation in the plea colloquy, we cannot conclude that reasonable grounds existed for questioning Reardon's competency and invoking KRS 504.100(1).

ALL CONCUR.

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