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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000025-MR

ROBERT TAYLOR, JR.

APPELLANT

v. APPEAL FROM NELSON CIRCUIT COURT
HONORABLE CHARLES C. SIMMS, III, JUDGE
ACTION NO. 11-CR-00253

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, COMBS, AND DIXON, JUDGES.

DIXON, JUDGE: The appellant, Robert Taylor, Jr., entered a conditional guilty plea pursuant to Kentucky Rule of Criminal Procedure (RCr) 8.09, which reserved his right to appeal the Nelson Circuit Court's finding that he was competent to stand trial and to assist in his defense. The decision of the circuit court is affirmed.

Taylor was indicted by a Nelson County Grand Jury for one count of sodomy in the first degree after he confessed to engaging in an inappropriate sexual act with his five-year-old nephew.¹ Dr. Eric Drogin conducted a two-hour initial psychological evaluation on November 28, 2011. Drogin determined that Taylor was not competent to stand trial and was unable to explain the role of his attorney, the judge, or the prosecutor.

Taylor was subsequently admitted to the Kentucky Correctional Psychiatric Center (KCPC). While at KCPC, Taylor met with Terri Curran, a social worker who reported that Taylor was able to explain the nature of his charges, as well as the acts that lead to his incarceration. Taylor also met with Dr. Greg Perri for two, two-hour sessions. As set forth in the trial court's order, Perri noted the following:

(1) that Taylor identified the prosecutor's role as "try to figure out if I'm telling the truth, or not telling the truth", (2) that he stated that the jury's role was to "tell the judge he's not guilty or guilty", (3) that he was aware that all of the jurors must agree on their verdict, (4) that he understood appropriate courtroom demeanor, (5) that if a witness lied, Taylor said he would "let Jennifer Lo [his attorney] know that they're lying", (6) that he indicated that he had confidence in his attorney, (7) that before he would do a plea bargain, Taylor said "I got to see what they give", (8) that he could identify his charges as "sexual assault", and (9) that he was 'able to identify relevant factors to consider prior to accepting or refuting [sic] a plea bargain."

As further grounds for his finding of competency, Perri relied on psychological testing which revealed that "Taylor is functioning in the Borderline range with

¹ The factual background leading to the criminal charges against Taylor is not relevant to this appeal and, as a result of their sensitive nature, will not be set forth in detail.

regard to overall level of intelligence” and he was “aware of the charges pending against him, as well as the potential consequences associated with a guilty verdict.” Based on his observations, and the observations of the KCPC staff, Perri determined that Taylor was competent.

On August 8, 2012, the trial court held an evidentiary hearing. Based on the telephonic testimony of Perri and Drogin, the trial court concluded that Taylor’s intellectual capacity was limited, but his understanding of the legal process had significantly improved. As a result, the trial court found that Taylor was competent, but noted that additional time would be provided throughout the trial for Taylor’s counsel to thoroughly explain the proceedings. On December 20, 2012, Taylor entered a conditional guilty plea which reserved the right to appeal the trial court’s finding of competency. This appeal followed.

“‘Incompetency to stand trial’ means, as a result of mental condition, lack of capacity to appreciate the nature and consequences of the proceedings against one or to participate rationally in one’s own defense.” Kentucky Revised Statute (KRS) 504.060(4). “[A] defendant is competent if he can ‘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.’” *Bishop v. Caudill*, 118 S.W.3d 159, 162-63 (quoting *Godinez v. Moran*, 509 U.S. 389, 397-98, 113 S.Ct. 2680, 2686, 125 L.Ed.2d 321 (1993)). When determining if a defendant is able to participate rationally in his defense, the trial court has broad discretion.

Commonwealth v. Wooten, 269 S.W.3d 857, 864 (Ky. 2008). “We may disturb a

trial court's determination only if the trial court's decision is clearly erroneous (*i.e.*, not supported by substantial evidence)." *Chapman v. Commonwealth*, 265 S.W.3d 156, 174 (Ky. 2007). Taylor asserts that the trial court's decision was not supported by substantial evidence and should be reversed. We disagree.

As set forth above, two doctors testified at Taylor's competency hearing. Perri, who had more opportunity to interact and observe Taylor than Drogin, testified that Taylor was competent to stand trial and to assist with his defense. After conducting a thorough review of both doctors' findings, the trial court concluded that Taylor was competent to stand trial and to assist with his defense. We are unable to say that the trial court's decision was clearly erroneous because it is supported by substantial evidence.

Perri's conclusion regarding competency was based on a physical examination, medical testing, biopsychosocial evaluation, psychiatric consultation, psychological testing, and clinical and forensic interviews. While at KCPC, Taylor was subject to around-the-clock behavioral monitoring by psychiatric nurses and correctional officers who made entries documenting Taylor's behavior and overall adjustment to the unit while hospitalized, all of which were reviewed by Perri when preparing his report. It is particularly relevant that, according to Perri's report, Taylor would be able to inform his attorney if witnesses were telling the truth, was able to understand his attorney's role, as well as the role of the prosecutor and judge, and was able to understand why he was in trouble and that

his actions could lead to punishment. *See Bishop*, 118 S.W.3d at 163 (citing LaFave, *Criminal Law*, 333-34 (2d ed. 1986)).

For the reasons set forth above, the decision of the trial court is affirmed.

ALL CONCUR.

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