

RENDERED: MARCH 15, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000339-MR

JIMMY RAY ARNDELL

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE BRIAN WIGGINS, JUDGE
ACTION NO. 17-CR-00198

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: DIXON, LAMBERT AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Jimmy Ray Arndell, Jr. (“Appellant”) appeals from a judgment and sentence of the Muhlenberg Circuit Court reflecting a plea of guilty on one count of receiving stolen property over \$500 (Kentucky Revised Statute “KRS” 514.110). Appellant argues that the circuit court erred in finding that he was competent to stand trial, and erred when it denied funding to hire an expert

competency evaluator. For the reasons stated below, we find no error and AFFIRM the judgment on appeal.

Facts and Procedural Background

On October 4, 2017, Appellant was found to be in possession of a stolen vehicle. He was subsequently charged with one count of receiving stolen property under \$10,000. At arraignment, Appellant's counsel noted that Appellant had previously been found incompetent to stand trial. The matter proceeded in Muhlenberg Circuit Court, whereupon Appellant was transported to the Kentucky Correctional Psychiatric Center ("KCPC") for a competency evaluation.

At KCPC, Appellant refused to participate in the competency evaluation. As such, forensic psychologist Dr. Steven Sparks was unable to form an opinion as to Appellant's competency. Appellant's counsel would later argue that Appellant refused to participate in the evaluation because he had trust issues. Appellant's counsel then sought funding under KRS 31.110 for an independent competency evaluation. The trial court denied the motion.

On January 23, 2018, the trial court conducted a competency hearing. Evidence was adduced that Dr. Sparks had interviewed Appellant on three prior occasions at KCPC from 2013 to 2017. On the first occasion, Dr. Sparks determined that Appellant was not competent to stand trial. On the second occasion, it was determined that Appellant was competent to stand trial. And after

the third evaluation in 2017, Dr. Sparks was unable to form an opinion because Appellant refused to be interviewed. In 2015, Dr. Sparks noted that Appellant possessed a driver's license, owned a cell phone, and had a social media account which all suggested that Appellant was high functioning and competent to stand trial. After the 2017 evaluation, Dr. Spark opined that one test demonstrated evidence of malingering or purposefully giving incorrect responses.

The trial court found that there was no intervening trauma between 2015 and 2017, and that Dr. Sparks received no new information that would convince him to change his prior opinion of competency. The court found that because Appellant refused to participate in his most recent evaluation, no new evidence of incompetency could be found. By way of an order rendered on January 24, 2018, the court determined that Appellant was competent to stand trial.

On February 5, 2018, Appellant appeared with counsel in open court. Pursuant to a plea bargain, Appellant withdrew his not guilty plea and entered a plea of guilty to the offense of receiving stolen property over \$500. The court rendered a judgment reflecting the plea, and sentenced Appellant to two years in prison minus credit for time served. This appeal followed.

Arguments and Analysis

Appellant, through counsel, now argues that the Muhlenberg Circuit Court committed reversible error in finding that he was competent to stand trial. Appellant contends that the finding was not supported by substantial evidence. While acknowledging that it is natural and appropriate for a trial court to be skeptical of a defendant's claim of incompetence when he refuses to cooperate with a competency evaluator, Appellant directs our attention to case law holding that the lack of cooperation may be a product of mental incompetence. He argues that because Dr. Sparks could not state with certainty that Appellant was competent to stand trial, the trial court erred when found him competent.

In the alternative, Appellant contends that even if this Court believes that the competency report meets the requirements of KRS 504.100(2), there is no preponderance of evidence supporting a finding of competency. He asserts that the trial court ignored prevailing legal and medical standards in considering the results of the 2015 and 2017 competency evaluations. Ultimately, Appellant argues that the conviction of an accused person while he is legally incompetent violates Due Process protections, and that the Muhlenberg Circuit Court erred in failing to so rule. He seeks an opinion remanding the matter so the trial court can make a proper determination of whether he was competent to stand trial or accept a guilty plea.

Kentucky Rules of Criminal Procedure ("RCr") 8.06 states:

If upon arraignment or during the proceedings there are reasonable grounds to believe that the defendant lacks the capacity to appreciate the nature and consequences of the proceedings against him or her, or to participate rationally in his or her defense, all proceedings shall be postponed until the issue of the incapacity is determined as provided by KRS 504.100.

KRS 504.100 sets forth the procedure when the trial court has “reasonable grounds” to believe competency is an issue:

(1) If 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.

(2) The report of the psychologist or psychiatrist shall state whether or not he finds the defendant incompetent to stand trial. If he finds the defendant is incompetent, the report shall state:

- (a) Whether there is substantial probability of his attaining competency in the foreseeable future; and
- (b) What type treatment and what type treatment facility the examiner recommends.

(3) After the filing of a report (or reports), the court shall hold a hearing to determine whether or not the defendant is competent to stand trial.

It is within the trial court’s discretion to determine whether there are “reasonable grounds” to believe a defendant may be incompetent to stand trial.

Dye v. Commonwealth, 477 S.W.2d 805, 806 (Ky. 1972). However, once facts

known to the trial court are sufficient to place a defendant's competency in issue, an evaluation and evidentiary hearing are mandatory. *Padgett v. Commonwealth*, 312 S.W.3d 336, 344-45 (Ky. 2010). Further, and pursuant to KRS 504.090, "[n]o defendant who is incompetent to stand trial shall be tried, convicted or sentenced so long as the incompetency continues." The standard to determine competency to stand trial is whether "as a result of a mental condition, [the defendant lacks the] capacity to appreciate the nature and consequences of the proceedings against one or to participate rationally in one's own defense." *Chapman v. Commonwealth*, 265 S.W.3d 156, 173-74 (Ky. 2007)(footnote and internal quotation marks omitted). And finally, the trial court's determination of competency is based on the preponderance of the evidence. *Id.* at 174. A trial court's finding of competency is reviewed for clear error and will only be reversed if it is not supported by substantial evidence. *Jackson v. Commonwealth*, 319 S.W.3d 347, 349 (Ky. 2010).

In the matter at bar, the Commonwealth acknowledges that there were reasonable grounds pursuant to CR 8.06 to believe that Appellant was not competent, and that the trial court properly conducted a competency hearing. Further, we conclude that the trial court complied with KRS 504.100(1) by appointing a psychologist or psychiatrist to examine, treat and report on the

defendant's mental condition. It then conducted a hearing pursuant to KRS 504.100(3) to determine whether the Appellant was competent to stand trial.

The question for our consideration, then, is whether the trial court's finding of competence was supported by substantial evidence and was therefore not clearly erroneous. *Johnson, supra*. We must answer this question in the affirmative. The trial court found substantial evidence of competency based on the totality of the record then before it. Specifically, the court relied on Dr. Sparks' 2015 finding of competency in addition to his testimony as to Appellant's performance on other tests in 2017. The court clearly sought to garner additional evidence by ordering another evaluation by Dr. Sparks, but Appellant refused to participate.

The court went on to find that Dr. Sparks identified no intervening events either between the 2015 and 2017 evaluations, or between the 2017 evaluation and the most recent attempted evaluation to indicate incompetency. The burden was on the Appellant to overcome the presumption of competency. *Gabbard v. Commonwealth*, 887 S.W.2d 547, 551 (Ky. 1994). He failed to meet that burden. While the most recent attempt to evaluate Appellant did not produce evidence of either competency or incompetency, the trial court was nonetheless tasked with statutory duty of ruling upon Appellant's competency to stand trial. KRS 504.100(3). It carried out that duty based on the all of the evidence presented

to it, and concluded from the entirety of the record that Appellant was competent to stand trial. As that conclusion was supported by substantial evidence, we find no error.

Appellant goes on to argue that the trial court erred in denying his request for additional funding to hire an independent evaluator. We find no error on this issue. An indigent defendant is entitled to public funding for expert assistance only if it is reasonably necessary. *Young v. Commonwealth*, 585 S.W.2d 378, 379 (Ky. 1979). Trial courts are not required to provide funds to defense experts for fishing expeditions, and “there is no violation of due process in the refusal to provide for expert witnesses where the defendant offers little more than an undeveloped assertion that the requested assistance would be beneficial.” *Simmons v. Commonwealth*, 746 S.W.2d 393, 395 (Ky. 1988)(citation omitted). Given the totality of the record, including the trial court’s appointment of the KCPC evaluator in conformity with KRS 504.100(1), we cannot conclude that the trial court committed reversible error in denying Appellant’s request to provide funds for an additional evaluator. We find no error.

Conclusion

For the foregoing reasons, we AFFIRM the judgment of the Muhlenberg Circuit Court.

ALL CONCUR.

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