IMPORTANT NOTICE

NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

RENDERED: APRIL 22, 2004
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

DATE 5-13-04 Ella Grouse, DC.

2002-SC-0816-MR

RAY ANTHONY MORRISON — APPELLANT

V.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
NO. 00-CR-00505

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Ray Anthony Morrison, appeals his conditional plea of guilty but mentally ill to one count of second-degree robbery, one count of first-degree robbery, and for being a second-degree persistent felony offender (PFO). The sole issue presented is whether the trial court committed error in determining Appellant was competent to stand trial, or otherwise enter a plea. For the reasons that follow, we affirm.

In May of 2000, the Fayette County grand jury charged Appellant with two counts of first-degree robbery and for being a first-degree PFO. Count I of the indictment was later amended to robbery in the second degree.

A hearing was held in August of 2001 to determine if Appellant was mentally competent to stand trial. At that hearing, the testimony of psychologist Dr. Donald G.

Beal was taken. He found Appellant to be below normal intelligence and cautioned that it would be incumbent on the trial court and counsel to use simple, concrete language that Appellant could understand. However, Dr. Beal did not envision any major difficulties, and stated Appellant was competent to stand trial within a reasonable psychological certainty. On the other hand, psychologist Dr. Peter B. Schilling disagreed with the assessment of Dr. Beal. Based on his evaluations and interactions with Appellant, Dr. Schilling concluded that Appellant was incompetent to stand trial. Additionally, Dr. Schilling stated that some of the methods used by Dr. Beal in his assessment of Appellant were outdated.

After considering the testimonies and other evidence presented at the hearing the trial judge commented that Appellant appeared to be at the lowest level of mental competency. However, the trial judge determined that all of the evidence demonstrated that Appellant understood the legal situation and was able to assist in his defense. Thus, Appellant was determined to be mentally competent after the first hearing.

Appellant's defense counsel subsequently moved the trial court to hold another competency hearing due to the allegedly outdated mental health tests used by Dr. Beal to evaluate Appellant. The trial court granted the motion and a second competency hearing was held in April of 2002.

Prior to the second competency hearing, Appellant was evaluated by another expert, Dr. William D. Weitzel, a psychiatrist. Psychologist Dr. C. Christopher Allen was also employed to conduct psychological testing in connection with Dr. Weitzel's evaluation. At the hearing, Dr. Weitzel testified that he found Appellant to be "savvy" and "street-smart." Dr. Weitzel believed that Appellant was competent to stand trial and that he would be able to assist his attorney in his defense. Dr. Allen also found

Appellant to be mentally competent. He testified that Appellant understood the legal proceedings and would be able to participate in his defense in a meaningful way. Dr. Schilling also testified at this hearing. Dr. Schilling reviewed the findings of Dr. Weitzel and Dr. Allen, and in spite of these findings, still believed Appellant to be mentally incompetent.

Following the second hearing, the trial judge stated that while it was clear that the court would have to guard against using language too technical or complex, Appellant was competent to either enter a plea or proceed to trial.

In August of 2002, Appellant agreed to enter a plea of guilty but mentally ill to the charges against him, conditioned on the right to appeal the trial court's decision concerning his competency. Appellant was subsequently sentenced to a prison term totaling twenty years. This appeal followed.

The single issue which we address herein is whether the trial court erred in finding Appellant competent to stand trial, or otherwise enter a plea. First, we note that "the competency to plead guilty and the competency to stand trial are identical." Thompson v. Commonwealth, Ky., 56 S.W.3d 406, 408 (2001). "The test for a defendant's competency to stand trial ... is whether [the defendant] has substantial capacity to comprehend the nature and consequences of the proceeding pending against him and to participate rationally in his defense." Commonwealth v. Griffin, Ky., 622 S.W.2d 214, 216-217 (1981), cert. denied, 456 U.S. 930, 102 S. Ct. 1980, 72 L.Ed.2d 447 (1982) (citations omitted). A trial court enjoys broad discretion in determining whether an accused is competent to stand trial and whether or not he has the ability to rationally assist counsel in his defense. See Hopewell v. Commonwealth, Ky., 641 S.W.2d 744, 748 (1982).

Appellant contends that the trial court ignored the totality of the evidence and erred in its ruling regarding his mental capacity. We cannot agree.

Here, the trial judge had occasion to consider the testimonies of multiple experts concerning Appellant's competency at two hearings. Furthermore, Appellant was present at both hearings and his trial counsel had the opportunity to cross-examine the experts. Of these experts, only one found that Appellant lacked the mental acumen to stand trial. The general consensus of the other experts was that Appellant reasonably understood the proceedings against him and was thus competent to stand trial. Undoubtedly, the weight of the testimonies of the various mental health professionals supports the trial court's ruling that Appellant was competent.

In addition, without regard to the mental health evidence, we acknowledge that it was permissible for the trial judge to consider her "own observations and impressions" of Appellant's conduct at the hearings. Mozee v. Commonwealth, Ky., 769 S.W.2d 757, 758 (1989). Since Appellant was present at both competency hearings, the trial judge was able to extensively observe Appellant. Indeed, the trial judge specifically stated that Appellant was attentive during the competency hearings, which lasted for several hours. The trial judge observed that throughout the legal proceedings, Appellant knew when something was said that was not in his best interest and wanted it challenged. Also, the trial judge indicated that this was a difficult decision, and that she was more familiar with Appellant's mental history than any other previous criminal defendant.

This Court agrees that the trial court had a difficult decision, and it is obvious that it was a decision which the trial judge carefully considered. Based on our review of the record, Appellant appears to have rationally comprehended the charges brought against him. It also appears that Appellant had a rational understanding of the various legal

proceedings in which he was involved. Furthermore, Appellant seemed to be able to communicate with his defense counsel in a relatively meaningful fashion.

Upon examination of the record on appeal and the facts peculiar to this case, we are unable to say that Appellant lacked the requisite capacity to contribute and participate rationally with defense counsel. Accordingly, we find no abuse of discretion on the part of the trial court and hold that substantial evidence existed to support the trial court's ruling. There was no error.

Wherefore, for the reasons aforesaid, the judgment of the Fayette Circuit Court is hereby affirmed.

All concur.

COUNSEL FOR APPELLANT:

Karen Maurer
Assistant Public Advocate
Department of Public Advocacy
100 Fair Oaks Lane, Suite 302
Frankfort, KY 40601

COUNSEL FOR APPELLEE:

Gregory D. Stumbo
Attorney General
Capitol Building
Frankfort, KY 40601

Todd D. Ferguson
Assistant Attorney General
Office of Attorney General
Criminal Appellate Division
1024 Capital Center Drive
Frankfort, KY 40601-8204