

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-609

No. COA20-810

Filed 2 November 2021

Gaston County, No. 16 CRS 55300

STATE OF NORTH CAROLINA

v.

EDUARDO JORGE ROJAS

Appeal by defendant from judgment entered 15 November 2019 by Judge Nathaniel J. Poovey in Gaston County Superior Court. Heard in the Court of Appeals 24 August 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Orlando L. Rodriguez, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woome-Deters, for defendant.

DIETZ, Judge.

¶ 1 Defendant Eduardo Rojas challenges his aggravated sentence imposed after pleading guilty to murdering his girlfriend by stabbing her more than fifty times. Rojas argues that the trial court deprived him of due process by failing on its own initiative to conduct a competency hearing before the trial on aggravating factors.

¶ 2 After initially being found incapable of proceeding to trial due to psychotic

disorders, Rojas received psychiatric hospital care. In three follow-up evaluations over several years, experts found him “barely” competent to stand trial but in a “precarious” situation that would require re-evaluation, particularly once Rojas confronted the stress of a trial. After his final evaluation, more than a year passed before Rojas pleaded guilty to second degree murder and then proceeded to a trial on the sentencing factors without any follow-up evaluation.

¶ 3 As explained below, given the passage of time since his last evaluation and the repeated indications by experts that he was barely competent and likely to experience deterioration in his mental capacity once court proceedings commenced, we hold that there was substantial evidence requiring a competency evaluation before Rojas proceeded to trial on the sentencing factors. We therefore vacate Rojas’s sentence and remand for a competency evaluation and, if appropriate, a new sentencing proceeding.

Facts and Procedural History

¶ 4 In 2016, Starr Costner was stabbed 53 times and left dead in the bathtub of her home where she lived with her boyfriend, Defendant Eduardo Rojas. Rojas’s mother, Virginia Garofalo, found Costner’s body.

¶ 5 Earlier that same morning, Rojas contacted his mother to come to his house, pick him up, and take him to the hospital. His mother noticed that his clothes were bloody and “bleach-stained, and he smelled of bleach.” Rojas refused to go back inside

to change clothes. His mother then took him to CaroMont Regional Hospital where he was admitted and observed for 24 hours in the psychiatric ward.

¶ 6 After taking Rojas to the hospital, his mother returned to the house and discovered Costner's body. Rojas was discharged from the hospital the next day and charged with murder. From the outset, there were questions about Rojas's competency. On 31 May 2016, Rojas was committed to Central Regional Hospital for an examination on his capacity to proceed to trial.

¶ 7 On 12 August 2016, Dr. Susan Hurt, a licensed psychologist with Central Regional Hospital, prepared an initial report. That report found Rojas incapable to proceed to trial due to "his current level of tangential, circumstantial, and disorganized thoughts" associated with long-standing psychotic symptoms. The report found that Rojas had "symptoms of racing and tangential thoughts, cognitive disorganization, and leaps of logic and connectedness which are frequently observed in individuals suffering psychosis." Dr. Hurt concluded that "Mr. Rojas' deficits appear to be directly related to his psychotic disorder and not to intellectual or learning deficits." The report notes that a "reduction of his psychotic symptoms and improvements in cognitive organization" could lead to capacity restoration.

¶ 8 As recommended by Dr. Hurt after this evaluation, the trial court entered an involuntary commitment custody order for Rojas to be committed for a period of twelve months of treatment that began on 6 October 2016. Later, Rojas was

committed to Broughton Hospital for restoration.

¶ 9 On 27 October 2017, a year into his time at Broughton Hospital, Dr. Hurt conducted a re-evaluation. In this second report, she concluded that Rojas was competent to proceed to trial, however he was “barely” at an “adequate level of cognitive functioning.” Dr. Hurt noted that this was a “close call” determination. She deemed Rojas capable to proceed with the caveat that attention needed “to be paid to the aspects of his care and support” as he moved through “the challenges of his legal defense.”

¶ 10 Dr. Hurt found that given “the seriousness of his charge, and the extraordinary demands placed on individuals during a trial for such a charge, the possibility cannot be rule[d] out that an extremely high level of stressful cognitive challenges could negatively affect Mr. Rojas’ psychological functioning.” Dr. Hurt further addressed the sensitive nature of Rojas’s mental state, noting that his “current higher level of functioning has resulted from 12 months of intensive inpatient treatment and highly structured support, so that the possibility remains that a dramatically different environment could result in deterioration in his functioning.”

¶ 11 In March 2018, the trial court ordered a second opinion report. On 15 March 2018, Dr. Walt McNulty, a licensed psychologist, submitted the second opinion report after evaluating Rojas and concluded that Rojas was capable to proceed. Dr. McNulty also concluded that Rojas “barely” met the conditions to be competent to stand trial.

STATE V. ROJAS

2021-NCCOA-609

Opinion of the Court

Dr. McNulty found that the results “of this evaluation and previous competency evaluations indicate that Mr. Rojas’ thinking abilities are most impacted by the Schizophrenia.” This report expressed concerns that Rojas’s “psychiatric stability and competence” was “precarious.” “Mr. Rojas’ records indicate that it took a long time for his thinking to clear when he was treated at Broughton Hospital last year suggesting his symptoms are deep seated.”

¶ 12 Dr. McNulty echoed Dr. Hurt’s concern that the stress of a trial could negatively impact Rojas’s psychological functioning, noting that a trial “would be highly taxing due to the complexity of the charges against him. Details and memories about his girlfriend and events around the time of the crime could arouse emotions and overwhelm his cognitive and emotional functioning.” Dr. McNulty explained that “Mr. Rojas’ condition could deteriorate to a point that his competency would become challenged.” “He would require close monitoring of his condition throughout a trial and access to regular professional and emotional supports.”

¶ 13 On 9 April 2018, the trial court ordered recommitment and re-evaluation due to defense counsel’s concerns over deterioration of Rojas’s mental status. On 1 June 2018, Dr. Hurt submitted the most recent and final evaluation of Rojas. Again, she found Rojas capable to proceed. At this point, Rojas had been out of Broughton Hospital and in jail for six months in the general population, where he took the same medication prescribed while at the hospital but was not “seen by mental health staff.”

In this last report, Dr. Hurt did not find Rojas “episodic for psychosis or deteriorated from the last time he was seen.” Additionally, other than “self-reported hallucinations, Mr. Rojas’ cognitive functioning was improved since his last evaluation.” Dr. Hurt found that Rojas demonstrated “adequate knowledge, understanding, comprehension, and reasoning ability regarding court and his charges.” But Dr. Hurt also noted that, as the trial court instructed, “regular evaluation of the Defendant’s capacity to proceed will be necessary for the duration of this case” and that Rojas would “remain at risk of relapse into episodes of psychosis.”

¶ 14 On 31 October 2018, the trial court found Rojas capable to proceed. At this time, the court “engaged in a discussion with the defendant posing a number of questions directed toward matters relevant to his capacity to proceed.” The court posed questions to Rojas regarding his understanding of his rights, his current mental state, and his prescribed medications, which Rojas answered cogently. The court also examined both Dr. Hurt’s June 2018 report and Dr. McNulty’s March 2018 report. The court found Rojas capable to proceed, “with the appropriate safeguards as to continued monitoring of the defendant’s condition as determined by the presiding judge throughout the proceedings.” Rojas’s counsel presented no counter-evidence but emphasized that Rojas’s mental state was a “fluid situation,” and counsel reserved “the right to raise this issue again” if his condition changed.

STATE V. ROJAS

2021-NCCOA-609

Opinion of the Court

¶ 15 Rojas did not proceed to trial in the time period immediately following this determination of competency. Eleven months later, on 16 September 2019, Rojas returned to the trial court and pleaded guilty to second degree murder. The trial court did not conduct a competency hearing at this time and accepted the plea after the standard colloquy with Rojas concerning his understanding of the guilty plea. Two months later, Rojas filed a notice of intent to waive a trial by jury on the existence of aggravating factors.

¶ 16 At the bench trial on sentencing factors, the trial court questioned Rojas about his decision not to testify. Rojas acknowledged that he had a “full and frank” conversation with his attorney about the decision to offer evidence and he understood that it was a “personal decision.” Dr. Hurt, the expert who prepared several reports on Rojas’s capacity, testified to the existence of mitigating factors. This included testimony about her initial evaluation in 2016, the re-evaluation in 2017, and the last evaluation from 2018. Dr. Jane Pope, a psychiatrist from Broughton Hospital, testified to Rojas’s daily treatment while he was at the hospital.

¶ 17 After hearing the evidence, the trial court found two aggravating factors. First, the court found that Rojas took advantage of a position of trust or confidence. Second, the court found that the offense was especially heinous, atrocious, or cruel. The court found that the mitigating factors offered by Rojas were present but were outweighed by the two aggravating factors. The court sentenced Rojas to an aggravated range

sentence of 397 to 489 months in prison.

¶ 18 Rojas gave oral notice of appeal. On 30 December 2020, Rojas filed a petition for a writ of certiorari with this Court. In our discretion, we allow the petition and issue a writ of certiorari to review the merits of this appeal.

Analysis

I. Competency hearing

¶ 19 Rojas first argues that the trial court erred by failing, on its own initiative, to conduct a competency hearing before the sentencing proceeding because there was substantial evidence before the court that raised questions about his competency.

¶ 20 It is a foundational principle of our criminal justice system that a defendant must be competent to stand trial. *Drope v. Missouri*, 420 U.S. 162, 171–72 (1975). A criminal trial of an incompetent defendant is a violation of due process. *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996). To protect this due process right, our General Statutes contain a statutory competency requirement:

No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

N.C. Gen. Stat. § 15A-1001(a).

¶ 21 A criminal defendant’s capacity to proceed to trial “may be raised at any time

on motion by the prosecutor, the defendant, the defense counsel, or the court. *Id.* § 15A-1002(a). Ordinarily, “the trial court is only required to hold a hearing to determine the defendant’s capacity to proceed *if* the question is raised.” *State v. Badgett*, 361 N.C. 234, 259, 644 S.E.2d 206, 221 (2007). Thus, “a defendant may waive the benefit of statutory constitutional provisions by . . . failure to assert it in apt time, or by conduct inconsistent with a purpose to insist upon it.” *State v. Staten*, 172 N.C. App. 673, 681, 616 S.E.2d 650, 656 (2005). But our Supreme Court has recognized the “constitutional duty” of courts to conduct a competency hearing *sua sponte* if there “is substantial evidence before the court indicating that the accused may be mentally incompetent.” *Id.* at 678, 681, 616 S.E.2d at 654, 656.

¶ 22 Rojas acknowledges that he did not raise a competency argument at the sentencing proceeding but asserts that there was substantial evidence indicating he may be incompetent. When assessing whether there was substantial evidence of possible lack of capacity, all relevant evidence, including evidence “of a defendant’s irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial,” should be considered. *State v. McRae*, 139 N.C. App. 387, 390, 533 S.E.2d 557, 559 (2000).

¶ 23 Here, two factors weigh strongly in favor of Rojas’s argument. First, there was a significant lapse in time between the sentencing proceeding and Rojas’s most recent competency evaluation. Health professionals last examined Rojas seventeen months

before the start of the sentencing trial. Likewise, the last competency hearing before the trial court occurred thirteen months before the trial. Because Rojas's earlier competency reports repeatedly found him "barely" competent and at risk of relapse, the passage of time is a significant factor in evaluating whether there was substantial evidence of possible competency issues. *State v. Hollars*, 376 N.C. 432, 442–43, 852 S.E.2d 135, 142–43 (2020).

¶ 24 More importantly, the reports from his earlier mental health evaluations also contained repeated warnings that Rojas's competence likely would become even more tenuous as the court proceedings commenced. For example, Dr. McNulty observed that memories about Costner's death could arouse emotions and overwhelm Rojas's cognitive and emotional functioning and that when Rojas confronts these painful facts his "condition could deteriorate to a point that his competency would become challenged." Similarly, Dr. Hurt's final report warned that "regular evaluation of the Defendant's capacity to proceed will be necessary for the duration of this case" and that Rojas would "remain at risk of relapse into episodes of psychosis" as he became involved in the court process.

¶ 25 More than a year after his last competency evaluation, Rojas returned to court and pleaded guilty to the second degree murder of Costner. As in *Hollars*, there were multiple mental health evaluations warning of the possibility of defendant's "mental stability to drastically deteriorate over a brief period of time and with the stress of

trial.” *Id.* at 443, 852 S.E.2d at 142. To be sure, as the State argues, the “record of competency evaluations was consistent” and Rojas had been found competent to stand trial in three consecutive reviews by experts. But those reports consistently emphasized that this could change once Rojas began a trial and was confronted with the charges against him. On balance, we find this case most closely aligned with those in which this Court determined that a competency hearing before trial was necessary to protect the defendant’s due process rights. *See id.*; *McRae*, 139 N.C. App. at 390–91, 533 S.E.2d at 559–60.

¶ 26 Rojas initially was found not competent to proceed to trial, then found “barely” competent in successive reports that warned the critical turning point in his competency likely would be the stress of the court proceeding itself, when Rojas was forced to confront his actions. More than a year passed between Rojas’s last competency evaluation and his return to court when he pleaded guilty to murder. In light of these facts, we hold that there was substantial evidence from the existing mental health reports indicating that Rojas was at a significant risk of competency issues at the time of the sentencing proceeding. We vacate Rojas’s criminal sentence and remand for the trial court to conduct a new sentencing proceeding after first evaluating Rojas’s capacity to proceed. *State v. Hollars*, 266 N.C. App. 534, 544, 833 S.E.2d 5, 11 (2019), *aff’d*, 376 N.C. 432, 852 S.E.2d 135 (2020).

II. Waiver of right to jury trial

¶ 27 Rojas next argues that the trial court erred by allowing him to waive his right to a jury trial on the existence of aggravated sentencing factors. Importantly, Rojas does not argue that he was not competent to waive his right to a jury trial on these factual issues. Instead, he argues that the trial court failed to follow the statutory procedure set out in N.C. Gen. Stat. § 15A-1201(c)(2). Rojas relies on the reasoning of the dissenting opinion in *State v. Hamer*, 272 N.C. App. 116, 127–28, 845 S.E.2d 846, 854 (2020). After this appeal commenced, our Supreme Court rejected that reasoning. *State v. Hamer*, 377 N.C. 502, 2021-NCSC-67. Under our Supreme Court’s holding in *Hamer*, Rojas cannot show any prejudicial error in the trial court’s decision to proceed without a jury. Accordingly, we reject this argument.

Conclusion

¶ 28 We vacate Rojas’s criminal sentence and remand for the trial court to conduct a new sentencing proceeding after first evaluating Rojas’s capacity to proceed.

VACATED AND REMANDED.

Chief Judge STROUD and Judge COLLINS concur.

Report per Rule 30(e).