

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Sheila G. Farmer, J.
-vs-	:	
	:	
ROBERT ALLISON	:	Case No. 2009CA0124
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 2009CR207D

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 24, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

KRISTEN L. PSCHOLKA-GARTNER
38 South Park Street
Mansfield, OH 44902

JEFFEREY R. STIFFLER
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Farmer, J.

{¶1} On May 11, 2009, the Richland County Grand Jury indicted appellant, Robert Allison, on one count of theft by deception in violation of R.C. 2913.02. Said charge arose from appellant taking items from a Wal-Mart store.

{¶2} On June 30, 2009, appellant pled not guilty by reason of insanity. On July 10, 2009, the trial court ordered a forensic examination of appellant regarding his plea. On August 10, 2009, the trial court ordered another examination of appellant to determine his competency to stand trial. Two evaluations were conducted by clinical psychologist Dale Ruppel, Ph.D. Dr. Ruppel issued a report indicating while appellant understood the nature and objectives of the proceedings against him, he was incompetent to stand trial because he lacked the motivation necessary to assist in his defense.

{¶3} A competency hearing was held on August 27, 2009. The trial court determined appellant was able to assist in his defense and was therefore competent to stand trial. Said decision was journalized via order filed August 31, 2009.

{¶4} On August 28, 2009, appellant pled guilty as charged. By sentencing entry filed October 6, 2009, the trial court sentenced appellant to one year of community control.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶6} "THE TRIAL COURT ERRED IN ACCEPTING APPELLANT'S PLEA OF GUILTY, AS APPELLANT WAS NOT COMPETENT TO STAND TRIAL."

I

{¶7} Appellant claims the trial court erred in finding him competent to stand trial and thereafter accepting his guilty plea. We disagree.

{¶8} It is appellant's position that the only evidence presented during his competency hearing was Dr. Ruppel's report wherein he opined appellant was not competent:

{¶9} "Therefore, it is my opinion, with reasonable psychological certainty, that the defendant, Robert Allison, does understand the nature and objective of the proceedings against him. However, it is also my opinion, with reasonable psychological certainty, that he does not currently have the capacity to assist in his defense." August 27, 2009 T. at 2-3; Court's Exhibit A.

{¶10} After a brief discussion with appellant on the record, a recess was taken and discussions were had in chambers. Thereafter, the competency hearing resumed and the trial court stated the following:

{¶11} "I noted in the competency hearing evaluation, competency evaluation, that Dr. Ruppel did find that Mr. Allison understands the nature and objective of the proceedings against him, but was concerned that he was not that motivated with the outcome of his case and therefore was not ready to assist his attorney.

{¶12} "Mr. Musilli has talked with Mr. Allison and is persuaded, as I am based on my conversation with Mr. Allison, that he is very much interested in the outcome of his case and would like to see this resolved in a reasonable way. I believe he therefore is capable at this point, and has sufficient capacity, is competent, to make decisions about

this case, so what I am understanding we're going to be doing is proceeding to a change of plea." *Id.* at 8.

{¶13} Thereafter, the trial court entered into a Crim.R. 11 colloquy with appellant. *Id.* at 9-14. Appellant responded appropriately to all the questions. *Id.* The trial court then accepted appellant's plea of guilty. *Id.* at 18.

{¶14} During sentencing, the trial court again explained his decision on the issue of competency as follows:

{¶15} "In any event, what happened, Mr. Allison, just so you understand, there was a challenge or question whether you were competent to stand trial. We got an opinion from the doctor. He said in his opinion you were not. I had a chance to talk with you in chambers, along with your attorney and the prosecutor. I was convinced that you did understand what was going on and you were willing to help your attorney, so I found you competent to stand trial." October 5, 2009 T. at 3-4.

{¶16} Appellant responded, "I got no problem with that. What I got a problem with is that doctor finding me incompetent when there was no grounds for it. I was talking to him as plain and simply as you, trying to answer every question the man had." *Id.* at 4.

{¶17} R.C. 2945.37 governs competency to stand trial. Subsection (G) states the following:

{¶18} "A defendant is presumed to be competent to stand trial. If, after a hearing, the court finds by a preponderance of the evidence that, because of the defendant's present mental condition, the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the

defendant's defense, the court shall find the defendant incompetent to stand trial and shall enter an order authorized by section 2945.38 of the Revised Code."

{¶19} "A trial court may use its own observations of a defendant's demeanor when applying the competency criteria, and as long as the court's finding is supported by some competent, credible evidence, the fact that the defendant's demeanor played a part in the court's decision is not reversible error." *State v. Stanley* (1997), 121 Ohio App.3d 673, 694.

{¶20} The trial court was not required to rely solely on Dr. Ruppel's professional opinion. In fact, Dr. Ruppel's report did not per se meet the statutory qualifications for competency.

{¶21} We find no error that the trial court's own observations and discussions with appellant were of greater significance to the trial court than Dr. Ruppel's opinion. The fact that appellant may have lacked the motivation to assist in his own defense was not the same as being unable to assist in his defense.

{¶22} Upon review, we find no error by the trial court in rendering a finding of competency and accepting appellant's guilty plea.

{¶23} The sole assignment of error is denied.

{¶24} The judgment of the Court of Common Pleas of Richland County, Ohio is hereby affirmed.

By Farmer, J.

Gwin, P.J. and

Hoffman, J. concur.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ William B. Hoffman

JUDGES

SGF/sg 609

