Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00502-CR

Charles Marcus **FINCH**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 216th Judicial District Court, Kendall County, Texas
Trial Court No. 5558
Honorable N. Keith Williams, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Karen Angelini, Justice
Marialyn Barnard, Justice
Rebeca C. Martinez, Justice

Delivered and Filed: September 14, 2016

AFFIRMED

Appellant, Charles Marcus Finch, was indicted for possession of a controlled substance, to which he pled nolo contendere. Prior to the sentencing hearing, Finch filed a motion to withdraw his plea, which, after a hearing, the trial court denied. Finch was then sentenced to fifteen years' confinement. In three issues on appeal, Finch asserts the trial court erred by (1) accepting his plea because it was not made intelligently, knowingly, or voluntarily; (2) denying his motion to withdraw his plea because his plea was not made intelligently, knowingly, or voluntarily; and (3) not staying the proceedings to hold an informal competency hearing. We affirm.

PROCEDURAL BACKGROUND

On September 4, 2014, the trial court commenced a plea agreement hearing. Finch was represented at the hearing by Mr. Ross Rodriguez, who was his second attorney. At the conclusion of this hearing, the trial court accepted Finch's nolo contendere plea, ordered a pre-sentence investigation report ("the PSI"), and stated it would make a decision on adjudication and sentencing at a November 6, 2014 hearing. The November hearing was continued to December 11, 2014, at which time Finch did not appear. The court reset the hearing to January 8, 2015 and issued a capias for Finch's arrest. Although Finch was later taken into custody, the hearing was reset a third time to March 5, 2015. At the March 5 hearing, Mr. Rodriguez said Finch had filed a grievance against him on the grounds that Rodriguez was ineffective; therefore, Rodriguez could not represent Finch. The sentencing was reset to April 9, 2015.

On April 9, Finch appeared, this time with a new attorney, Ms. Karen Anderson, who asked for another continuance. The hearing was reset to May 7, 2015. On May 7, the hearing was reset again to July 9, 2015. The sentencing hearing eventually commenced on July 16, 2015. At the July 16 hearing, the trial court first heard and denied Finch's motion to withdraw his plea, and then adjudicated Finch guilty and orally sentenced him to fifteen years' confinement. Finch was formally sentenced and remanded into custody on August 3, 2015.

PLEA OF NOLO CONTENDERE

Finch's first two issues involve a determination of whether his plea was made intelligently, knowingly, and voluntarily; therefore, we address his arguments under both issues together.

A. Applicable Law and Standard of Review

"No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary." TEX. CRIM. PROC. CODE ANN. art. 26.13(b) (West Supp. 2015). Article 26.13 requires a trial court to admonish the

defendant, prior to accepting a plea of nolo contendere, about the range of the punishment attached to the offense. *Id.* at art. 26.13(a)(1). A record showing the defendant was properly admonished of the punishment range attached to the offense establishes a prima facie case that his plea was knowing and voluntary. *See Mallett v. State*, 65 S.W.3d 59, 64 (Tex. Crim. App. 2001); *Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998).

"In admonishing the defendant[,] substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court." *Id.* at art. 26.13(c). A defendant may still claim his plea was involuntary; however, the burden shifts to the defendant to demonstrate he did not fully understand the consequences of his plea such that he suffered harm. *Martinez*, 981 S.W.2d at 197. This burden is quite heavy, especially when the defendant states he understands the nature of the proceeding, the allegations are true, and no outside pressure or influences coerced him into making the plea. *Crawford v. State*, 890 S.W.2d 941, 944 (Tex. App.—San Antonio 1994, no pet.). A plea does not become involuntary simply because a defendant receives a greater punishment than he expected, even if that expectation was raised by his attorney. *Id.* at 945.

After a defendant has pled nolo contendere, he "may withdraw his guilty plea as a matter of right any time before judgment has been pronounced or the case has been taken under advisement." *Moreno v. State*, 90 S.W.3d 887, 889 (Tex. App.—San Antonio 2002, no pet.). Once the trial court has admonished the defendant, received the plea, and received evidence, the passage of the case for a presentence investigation constitutes taking the case under advisement. *Id.*

In this case, the trial court had taken Finch's case under advisement before he moved to withdraw his plea; therefore, he was not entitled to withdraw his plea as a matter of right. Therefore, we review the court's decision to deny Finch's motion to withdraw his plea under an

abuse of discretion standard. *Id.* To establish an abuse of discretion, Finch must show the trial court's ruling lies outside the zone of reasonable disagreement. *Id.* The trial court is the sole judge of a defendant's credibility on a motion to withdraw a plea. *Coronado v. State,* 25 S.W.3d 806, 810 (Tex. App.—Waco 2000, pet. ref'd).

B. The Plea Hearing

At the start of the plea hearing, Mr. Rodriguez stated Finch had been able to assist him in his defense and Finch was competent to stand trial. Finch stated he was satisfied with the legal representation provided by Mr. Rodriguez. The trial court confirmed with Mr. Rodriguez that Finch would enter an open plea "subject to the full range of punishment" and await sentencing after the PSI was completed. When the trial court asked Finch if he understood there was no agreement to cap punishment, Finch replied he thought the agreement was for only five years. The court then explained to Finch that the court would order the PSI, conduct a sentencing hearing at which evidence could be presented, and the court would then sentence him to "the full range, from five on the lower end, up to 99 or life on the higher end, and everything in between." The court asked Finch if he understood. When Finch replied that he did, the trial court asked him why he thought the agreement was for five years, to which Finch began to reply "It was my lawyer explained . . . ." Mr. Rodriguez interrupted and stated he believed Finch thought five years was the minimum sentence. The court asked Finch if that was what he thought, and Finch replied, "Yes."

The following exchange between the trial court and Finch then occurred:

> Court: Just to make sure — I'm going to say it again to make sure we do understand. And are you able to understand what I'm saying?
> Finch: I understand.
> Court: Okay. Are you on any kind of medication or prescription or drug or anything that would keep you from being able to understand?
> Finch: No. I am on medication, but I understand what you're saying.
> Court: But it's — on medication that doesn't affect your ability to think?

Finch: No.
Court: So you're clear-headed right now?
Finch: Yes.
Court: And you are able to respond with good sense?
Finch: Yes.
Court: Okay. So once again, if you plead guilty today or no contest, when we come to sentencing I'll have the right to sentence you from the minimum of probation or, for sentencing, five years, minimum, up to 99 years in the penitentiary, or life in the penitentiary and up to $10,000. Do you understand that?
Finch: Yes.

The court confirmed with Finch that he had reviewed the "Defendant's Plea of Guilt or Nolo Contendere, Waivers, Stipulations of Evidence and Admonishments," and that Finch had asked his attorney all the questions he needed to ask about the document. The record on appeal contains a written copy of the admonishments, signed by Finch and his attorney. The following exchange between the trial court and Finch then occurred:

Court: It's important. It affects your rights. Did you sign every page?
Finch: Yes.
Court: Did you make sure you understood every page before you signed it?
Finch: Yes.
Court: Out loud?
Finch: Yes.
Court: Okay. And did Mr. Rodriguez explain every page to you?
Finch: Yes.

. . .

Court: Okay. All right. Do you have any questions about this document now?
Finch: No, I do not, sir.

After confirming with Mr. Rodriguez that he reviewed the waivers, stipulations and admonishments with Finch and Finch understood each page he signed, the trial court approved the waivers and stipulations and found "they were knowingly and voluntarily entered into with full opportunity to consult with counsel."

The trial court next discussed the plea with Finch:

Court: . . . Now, and I'm going to present to you the indictment, sir. And the indictment is the, as you know, is the legal document that sets forth the charges against you. Do you understand what you're charged with in this case?
Finch: Yes.

Court: How do you plead to those charges?
Finch: No contest, sir.
Court: All right. Are pleading no contest of your own free will?
Finch: Yes.
Court: Has anybody forced you or threatened you into making this plea?
Finch: No, sir. But the situation that it is at hand, I have no choice.
Court: Okay. I want to make sure, Mr. Finch, that what you do here today, you know what you're doing. And I want to make sure you're doing it voluntarily, of your own free will. And I want to make sure that nobody has put pressure on you or made you or threatened you about doing this. So what do you mean you had no choice?
Finch: It's — Sir, it's how the law works, Your Honor. And I have no choice but to save my soul by signing this.
Court: Is that because —

Help me out here, Mr. Rodriguez.

Rodriguez: Your Honor, what we're looking at is essentially the evidence involved and the likelihood of prevailing at trial, with — Essentially, Your Honor, the plea bargain that we've made with the State, Judge, is that the — there was an enhancement, and that's part of the plea bargain, the enhancement has been waived. So the enhancement is now waived off of it. It probably would not have been waived off in a jury trial.
Court: Okay. I apologize. So you think that, Mr. Finch, that things weren't looking real good for you?
Finch: Your Honor, I — my arrest, I was told if I gave up some information that I would, you know, get this situation taken care of. And the certain situation, it — some way it backfired on me. And I am not guilty of this offense, but I have to plead no contest to this offense, sir. I'm sorry I have to say that to this Court, but —
Court: Well, no, you speak the truth. I want to hear —
Finch: I have no choice. I have no choice, sir.

. . .

Court: By no choice, do you mean because the evidence was so strong against you that you knew if you went to trial you would be convicted, or what do you mean? Do you feel like — were you thinking that if you went to trial, that the evidence was against you and you might lose?
Finch: Well, sir, I just witnessed the defendant before me and what you just — you know, and I kind of was sitting there and thinking — you know, you feel like that situation was kind of harsh. And I'm charged with the same thing, but more. I have a co-defendant in this situation, that the first time I ever met my [first attorney] — Mr. Ferguson, I was signing some paperwork stating something for three years' probation. The next thing I know I'm in this situation right here, sir. And the first time I ever met you, you had asked me why did I choose to not use Mr. Ferguson. And Mr. Ferguson was, you know, just —
Court: Okay. I want to do this correctly, sir. And I want — When a person enters a plea, I want them to plead truthfully and voluntarily and not feeling pressured to do it. I want you to do it because it's the right thing to do, it's the truthful thing to do.

I want to read something to you, because you signed it. And I don't want you to sign something if it's not true. I'm not going to accept that. . . . All of the facts, statements and allegations contained in said indictment are true and correct, and I stipulate that I committed the offense and acts all as charged and alleged in said indictment.
Okay. Is that your signature?
Finch: That's my signature, Your Honor.

. . .

Court: You swore that that is a true statement.
Finch: Yes, sir.
Court: So you understand in that stipulation paragraph you are stating, I am guilty.
Finch: Yes, sir.
Court: But you just told me a moment ago you're not guilty.
Finch: Sir, I'm not guilty of this offense. I wish it could have worked out a different way with the information that I gave the DPS and I was supposed to get credit for it, but I did —
Court: Ross [Rodriguez], I need some help here, because I can't accept this if he's lying on his —
Finch: I'm not lying, sir. I signed it.
Court: Well, no. If you say you're guilty here and it's sworn to, then that's a lie, if you're saying you're not guilty. Either you are — you're here today, you have a right to a jury trial. You understand that?
Finch: Yes, sir.
Court: You have a constitutional right to a jury trial, to have all the evidence come in to be subjected to cross-examination by your lawyer and the other lawyer, and to have the jury to determine whether you are guilty or not. But you plead a moment ago — you stated a moment ago you are not guilty of this offense. I just read to you where you swore to the fact that you are guilty. And if you're saying you're absolutely not guilty, then this is a lie and you have perjured yourself.
So I want the truth. Do you want to go with the plea that you are guilty as charged or not guilty? If you are not guilty, I will not accept this and we will proceed to a jury trial.
Finch: Sir, I'm sorry that I've confused the Court. I signed it. All I know that I just did right now is upset you.
Court: I'm not upset in the least. My concern is I want to do the right thing, Mr. Finch. I'm not upset in the least. I just want to do right. I don't want any person to leave this Court thinking that they've been railroaded into a plea that they didn't want to make. And you have the right to have the case tried against you and let the chips fall where they may. But this doesn't upset me at all. It — but I have to feel comfortable with you're [sic] speaking truthfully to the Court so I'll know whether or not to accept this.
Finch: I'm speaking truthfully to the Court, but —

The court again stated it wanted Finch to do the right thing and not be pressured, and it allowed Finch to confer with his attorney off the record. The court stated: "And if you want to

withdraw what your plea was and have the case back on the trial docket, we'll do that, okay?" After Finch and his attorney conferred, the trial court went back on the record:

> Court: Okay. Do you understand now, Mr. Finch, after visiting with your lawyer, that all I wanted to do is to make sure we did the correct thing and the right thing, okay? Do you understand that?
> Finch: Yes.
> Court: Now, I want to ask you again, after you have consulted with your lawyers —
> And Mr. Rodriguez, did you go over all the — his rights, his legal rights, his options about his plea, about making sure he was being honest and truthful to the Court?
>
> [Rodriguez stated that he had reviewed the admonishments with Finch]
>
> Court: And what I'm focusing on right now though, is what happened at the hearing a few minutes ago where he said he stipulated to his guilt, but then he said, I'm not guilty. And so I don't want him to perjure himself before the Court, nor do I want him to enter a plea that is not correct. I want him to feel free to enter the right plea and exercise his right to a jury trial if he — if that's what he wants to do and if he indeed is not guilty.
> If he is guilty and it's a true statement, then we accept the — then we move forward. But I just don't want it to be thought that he was in any way pressured to make a bad decision.
> Rodriguez: . . . And he understands. He was basically, Your Honor, wanting to let the Court know about something that happened prior in his case, which I told him that's not relevant to these proceedings. And, Your Honor, he had looked at the — I guess the plea before him trying to compare apples and oranges, but in totally different circumstances. . . . .

The trial court again asked Finch to look at the documents before him and asked whether he understood the charges or had any questions. Finch said he understood the charges and had no questions. Finch also said he understood that although he was pleading no contest, the court could accept and approve the stipulations, and he agreed his statement that he was guilty of the stipulations and his plea of no contest to the charge was made freely and voluntarily. Finally, the court asked Finch if he understood everything that was happening, and Finch replied, "I understand . . . this very clearly." Finch replied "Yes" when asked if he understood the court would have the full range of punishment, or probation, available at sentencing following receipt of the PSI. The court ended the hearing by finding sufficient evidence to support a finding of guilt beyond a

reasonable doubt for the underlying offense, but stated it would wait until after the PSI to make a decision on adjudication and sentencing.

C. Motion to Withdraw Plea and Sentencing

At the start of the sentencing hearing, Ms. Anderson argued Finch's plea of nolo contendere was not made voluntarily or knowingly because his plea was "based on misinformation," trial counsel was ineffective, and Finch was not competent at the time he made his plea because he was taking medication.

Finch testified he fired Mr. Ferguson because that attorney only got a twenty-year offer from the State. According to Finch, his next attorney, Mr. Rodriguez, received several offers from the State, ranging from twenty-five years to forty years. Finch said he refused those offers and he would have refused an offer of fifteen years, ten years, or any "serious jail time." Finch testified that during the plea hearing he was taking several medications. When asked what he meant when he told the trial court during the plea hearing that he had "no choice," Finch explained he was following his attorney's advice and his attorney made him "feel like [he] wasn't going to get this deal [of eight years' probation] if [he] didn't go with his advice." Although he admitted he had a prior felony conviction, Finch stated he did not know his sentence could be enhanced based on the prior conviction. When asked what transpired during the break in the plea proceedings when he spoke to his attorney that made him change his mind, Finch replied, "False pretense that I was going to be getting eight years' probation [and] deferred adjudication." Finch admitted his attorney told him he could withdraw his plea. Finch said he did not expect to "do some real time" when he entered his plea, he "absolutely [would] not" have accepted any offer that involved going to prison for a significant amount of time, and he did not want to plead guilty. He thought entering into a plea with the State was the only way to get probation. He said he wrote a letter to the trial court on December 31, 2014, in which he complained that within one week of entering his plea he asked

Mr. Rodriguez to withdraw the plea; and although a motion to withdraw the plea was prepared on December 3, it was not filed until December 31.[1]

On cross-examination, Finch insisted he was told by his attorney to tell the trial court "yes" to various questions, such as whether he understood everything despite being on medications or that his stipulations were true.

The State called Rusty Salazar, with Kendall County Adult Probation, to testify about Finch's PSI. Salazar said he met with Finch, Finch was cooperative, and Finch never mentioned a desire to withdraw his plea. Salazar also stated Finch never mentioned he thought he would get probation or that he had either health or mental issues.

After hearing arguments from counsel, the trial court denied the motion to withdraw Finch's plea and proceeded to sentencing. At the conclusion of the hearing, the trial court pronounced a sentence of fifteen years' confinement.

D. Analysis

On appeal, Finch contends he did not understand the consequences of his plea because he was misled and confused by his first two attorneys about the length of his sentence and whether he would receive probation instead of prison time. Finch contends he did not understand the nature of the proceedings against him because he was heavily medicated and he believed he could withdraw his plea when the trial court recessed the plea hearing to allow him to confer with Mr. Rodriguez, but Rodriguez told him to only answer "yes" to questions from the judge. Finch contends he did not understand the role of enhancements, and he never would have accepted any offer that involved significant prison time. Finally, Finch asserts the trial court threatened him with a perjury charge.

[1] The letter, which is the "grievance" mentioned at the plea hearing, was admitted into evidence.

Because Finch did not expressly ask that his plea be withdrawn during the plea hearing, we construe his first issue as asserting the trial court erred by accepting his plea. When a defendant waives a jury and enters a plea of guilty or nolo contendere before the trial court, the court is not required to *sua sponte* withdraw the plea and enter a plea of not guilty so long as the court fulfills its duty to consider the evidence submitted, even where evidence is adduced that either makes the defendant's innocence apparent or raises an issue as to the defendant's guilt. *See Moon v. State*, 572 S.W.2d 681, 682 (Tex. Crim. App. 1978) (majority adopting dissenting opinion on rehearing); *see also Aldrich v. State*, 104 S.W.3d 890, 894 (Tex. Crim. App. 2003) (stating *Moon* requires nothing more than a decision by the trial court "that a guilty-pleading defendant was guilty as he pleaded, guilty of a lesser included offense, or not guilty").

Here, the trial court found that Finch's stipulation of evidence was signed knowingly, voluntarily, and with full opportunity to consult with counsel, and there was sufficient evidence to support a finding of guilt beyond a reasonable doubt for the underlying offense. Therefore, we conclude the trial court fulfilled its duty to consider the evidence submitted. Although Finch stated he "had no choice" to enter his plea and he was "not guilty," the record reveals the trial court repeatedly told Finch it wanted him to plead truthfully and to not feel pressured to enter a plea of nolo contendere. As to Finch's contention that the trial court threatened perjury, we disagree with his view of the record. The trial court repeatedly advised Finch that it wanted to ensure Finch entered the plea Finch wanted to enter and that the trial court would not accept a plea if Finch wanted to withdraw his plea. The trial court also allowed Finch time to consult with his attorney. On this record, we conclude Finch did not carry his heavy burden of showing he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court. Therefore, the trial court did not err by accepting Finch's plea of nolo contendere.

Finch also complains the trial court erred by denying his motion to withdraw his plea. At the hearing on his motion, Finch testified about the different offers his first two attorneys allegedly received from the State, and that he never would have accepted any plea that included jail time. Although Finch admitted his attorney told him he could withdraw his plea, he said he believed he would get probation if he entered a plea. At the hearing on Finch's motion to withdraw his plea, the trial court was the sole judge of Finch's credibility. *Coronado*, 25 S.W.3d at 810. On this record, we conclude Finch did not carry his heavy burden of showing he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court. Therefore, the trial court did not err by denying Finch's motion to withdraw his plea.

COMPETENCY HEARING

In his final issue on appeal, Finch asserts the trial court erred by not *sua sponte* staying the proceedings to conduct an informal competency hearing. Finch contends "[a]ny reasonable person when faced with the notion that someone is under medication while under oath would make further inquiry to the state of mind and mental capacity." He contends he was under the influence of four different prescription medications taken the morning of the plea hearing, which lowered his inhibitions and slowed his thought process.

A plea of nolo contendere "shall [not] be accepted by the court unless it appears that the defendant is mentally competent . . . ." *See* TEX. CRIM. PROC. CODE art. 26.13(b). A person is incompetent to stand trial if he does not have: (1) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding; or (2) a rational as well as factual understanding of the proceedings against him. *Id.* at art. 46B.003(a). "A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence." *Id.* at art. 46B.003(b).

"If evidence suggesting the defendant may be incompetent to stand trial comes to the attention of the court, the court on its own motion shall suggest that the defendant may be incompetent to stand trial." *Id.* at art. 46B.004(b) (West Supp. 2015). "On suggestion that the defendant may be incompetent to stand trial, the court shall determine by informal inquiry whether there is some evidence from any source that would support a finding that the defendant may be incompetent to stand trial." *Id.* at art. 46B.004(c). With exceptions that do not apply here, if the trial court determines there is evidence to support a finding of incompetency, the court shall stay all other proceedings in the case. *Id.* at art. 46B.004(d).

Here, we determine whether evidence suggesting Finch may have been incompetent to stand trial came to the trial court's attention. "A suggestion of incompetency is the threshold requirement for an informal inquiry . . . and may consist solely of a representation from any credible source that the defendant may be incompetent." *Id.* at art. 46B.004(c-1). "A further evidentiary showing is not required to initiate the inquiry, and the court is not required to have a bona fide doubt about the competency of the defendant."[2] *Id.* "Evidence suggesting the need for an informal inquiry may be based on observations made in relation to one or more of the factors described by Article 46B.024 or on any other indication that the defendant is incompetent within the meaning of Article 46B.003." *Id.* The relevant time frame for determining competence is at the time of the proceeding. *Jackson v. State*, 391 S.W.3d 139, 143 (Tex. App.—Texarkana 2012, no pet); *Baker v. State*, 04-14-00676-CR, 2016 WL 1588278, at *3 (Tex. App.—San Antonio Apr. 20, 2016, pet. filed).

[2] On appeal, Finch relies on *Montoya v. State*, 291 S.W.3d 420, 424-25 (Tex. Crim. App. 2009), which held a competency hearing is required if the evidence is sufficient to raise a bona fide doubt in the mind of the judge whether the defendant is legally competent. *Montoya* was superseded by the 2011 enactment of Article 46B.004(c-1). *See Turner v. State*, 422 S.W.3d 676, 692 (Tex. Crim. App. 2013) (noting, "Legislature has subsequently rejected the bona fide doubt standard for purposes of Article 46B.004 . . . .").

A suggestion of incompetency may be based on the trial court's observations related to the defendant's capacity to:

> (A) rationally understand the charges against the defendant and the potential consequences of the pending criminal proceedings;
> (B) disclose to counsel pertinent facts, events, and states of mind;
> (C) engage in a reasoned choice of legal strategies and options;
> (D) understand the adversarial nature of criminal proceedings;
> (E) exhibit appropriate courtroom behavior; and
> (F) testify.

TEX. CRIM. PROC. CODE art. 46B.024(1) (West Supp. 2015).

Other considerations include the defendant's current indications of mental illness, his personal history of mental illness, whether the condition has lasted or is expected to last continuously for at least one year, the degree of impairment resulting from the mental illness and its specific impact on the defendant's capacity to rationally engage with counsel, and whether the defendant takes psychoactive or other medications and their effect on the defendant's appearance, demeanor and ability to participate in the proceedings. *Id.* at art. 46B.024(2)-(5).

We review the trial court's decision not to conduct an informal competency inquiry for an abuse of discretion. *Montoya v. State*, 291 S.W.3d 420, 426 (Tex. Crim. App. 2009), *superseded by statute on other grounds as stated in Turner*, 422 S.W.3d at 692; *Jackson*, 391 S.W.3d at 141. The trial court's assessment of a defendant's ability to rationally and factually understand the proceedings and to assist counsel is "entitled to great deference" by the reviewing court. *See McDaniel v. State*, 98 S.W.3d 704, 713 (Tex. Crim. App. 2003). We do not substitute our judgment for that of the trial court; rather, we determine whether the trial court's decision was arbitrary or unreasonable. *See Montoya*, 291 S.W.3d at 426 (noting trial court is "in a better position to determine whether [the defendant] was presently competent").

Finch contends the fact that he was "under the grip" of four different prescription medications, all taken the morning of the plea hearing; that he answered "yes" to every question

the trial court asked; that he could not recall signing the admonishments; and several instances in which he was asked to speak louder should have triggered an informal inquiry into his competence.[3] We disagree.

At the start of the plea hearing, the trial court asked Finch whether he was on any type of medication or drug that would prevent him from understanding the proceeding, and Finch stated he was on medication but he understood what the trial court was saying. The trial court again clarified—and Finch agreed—the medication did not affect Finch's ability to think, Finch was "clear-headed," and Finch was able to respond with good sense. Finch's attorney, Mr. Rodriguez, stated Finch had been able to assist in his defense and he believed Finch was competent to stand trial. Finch said he was satisfied with the legal representation provided by Rodriguez. When asked by the trial court later in the proceeding if he understood "what we're doing," Finch replied that he understood "very clearly."

The fact that Finch may have been on medication is not sufficient to warrant a competency inquiry absent evidence of a present inability to communicate with his attorney or understand the proceedings. *Hobbs v. State*, 359 S.W.3d 919, 925 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (holding, "[n]either appellant's history of mental illness nor the fact that appellant may have been on psychiatric medication is sufficient to warrant a competency inquiry absent evidence of a present inability to communicate with his attorney or understand the proceedings"); *LaHood v. State*, 171 S.W.3d 613, 619 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd) (statements by accused that he saw the lights blink, was on medication for schizophrenia, and had not taken his

[3] On appeal, Finch also relies on arguments made by Ms. Anderson during the July 16, 2015 hearing on Finch's motion to withdraw his plea. However, the relevant time frame for determining competence is at the time of the September 4, 2014 plea proceeding. *See Jackson*, 391 S.W.3d at 143; *Baker*, 2016 WL 1588278, at *3. Therefore, we do not consider unsubstantiated arguments made by Finch's attorney during the July 16, 2015 hearing.

medications during one of the proceedings were not sufficient to require an inquiry of competency).

Also, although Finch was asked at one point to speak louder, his answers were not incoherent, muddled, vague, or otherwise unclear. Isolated instances of Finch's confusion or misunderstanding of the trial court's questions in isolation and out of context are not evidence of incompetence "when the rest of the record shows that the issues were immediately and easily clarified by the trial judge or defendant's attorney and that the defendant indicated [his] understanding." *Montoya*, 291 S.W.3d at 426.

Our review of the record reveals there was no suggestion from any source during the plea hearing that Finch did not have a rational and factual understanding of the proceedings against him or that he did not possess the present ability to consult with counsel with a reasonable degree of rational understanding or conduct his own defense. Therefore, the trial court did not abuse its discretion by not conducting an informal inquiry into Finch's competence.

CONCLUSION

We overrule Finch's issues on appeal and affirm the trial court's judgment.

Marialyn Barnard, Justice

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