

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00350-CR
NO. 09-11-00351-CR

EX PARTE EDWARD ANDREW SCHMIDT

On Appeal from the 359th District Court
Montgomery County, Texas
Trial Cause Nos. 10-07-07005-CR and 10-01-00290-CR

MEMORANDUM OPINION

Edward Andrew Schmidt appeals the trial court's orders denying his pretrial applications for writs of habeas corpus. In his applications, Schmidt contends that he was illegally confined by the sheriff of Montgomery County pending his transfer to the Rusk State Hospital. Additionally, because the doctors who performed competency evaluations each expressed the opinion that it is unlikely that Schmidt's competency can be restored, Schmidt argues that the trial court was without power to commit him. Schmidt maintains the judgments committing him to Rusk State Hospital should be withdrawn, the conditions of his bonds reinstated, and he should be allowed to enroll in an outpatient clinic of mental health and rehabilitation. Because we conclude that Schmidt has not

shown the trial court abused its discretion in denying his applications, we affirm the trial court's orders.

Background

A grand jury in Montgomery County indicted Schmidt, in separate indictments, for indecency with a child by sexual contact and for burglarizing a habitation. *See* Tex. Penal Code Ann. §§ 21.11(a)(1),(d), 30.02(a),(d) (West 2011). In the pretrial proceedings conducted on February 22, 2011, and after receiving the reports of four doctors regarding Schmidt's competence to stand trial, the State and Schmidt's trial counsel agreed that Schmidt was incompetent. Based on the parties' agreement that Schmidt was not competent, the trial court signed an agreed judgment of incompetency. The judgments in each case commit Schmidt to Rusk State Hospital for a period not to exceed 120 days.

Before his transfer to Rusk State Hospital, Schmidt filed applications seeking writs of habeas corpus in which he requested his release. Each application alleges that Schmidt's continued confinement violates Schmidt's constitutional rights. Schmidt asked the trial court to reinstate the conditions of his bond and to order that he be given outpatient treatment.

The trial court conducted a hearing on Schmidt's applications. At the hearing, Schmidt's counsel argued that Schmidt's competency could not be restored due to a brain injury that Schmidt had suffered as a child. Without the prospect that he could receive treatments that would allow his competency to be returned, Schmidt contends the trial

court had no power to commit him to Rusk State Hospital. After the hearing, the trial court denied Schmidt's applications for habeas relief.

According to the State, Rusk State Hospital admitted Schmidt on July 13, 2011. The State filed a motion to dismiss Schmidt's appeals and argued that his appeals were moot because he had been transferred by the sheriff to Rusk State Hospital. Schmidt opposed the State's motion, arguing that the issues he raised in his appeals are not moot because his competency cannot be restored. In light of Schmidt's challenge to the validity of the trial court's orders that committed him to Rusk State Hospital, we conclude that Schmidt's appeals are not moot, and we address the merits of Schmidt's appeals.

Standard of Review and Applicable Law

In reviewing a trial court's decision on an application for habeas relief, we review the facts in the light most favorable to the trial court's ruling and, absent an abuse of discretion, we uphold the ruling. *Ex parte Wheeler*, 203 S.W.3d 317, 324 (Tex. Crim. App. 2006). We give "almost total deference to a trial court's determination of the historical facts[,]'" particularly when the findings are based on an evaluation of credibility and demeanor. *Ex parte Peterson*, 117 S.W.3d 804, 819 (Tex. Crim. App. 2003), *overruled on other grounds by Ex parte Lewis*, 219 S.W.3d 335 (Tex. Crim. App. 2007) (quoting *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)). If the resolution of the ultimate question turns on an application of legal standards, we review the determination *de novo*. *Id.*

Chapter 46B of the Texas Code of Criminal Procedure establishes the procedures that generally apply to a trial court's determination of a criminal defendant's competency to stand trial and includes procedures that allow a trial court to commit an incompetent defendant to a mental health facility such as Rusk State Hospital. *See* Tex. Code Crim. Proc. Ann. arts. 46B.001-.0086 (West 2006 & Supp. 2010). Under these procedures, based on a trial court's initial finding that a defendant is incompetent to stand trial, the trial court is to "proceed under Subchapter D." *Id.* art. 46B.055 (West 2006).

After making an initial determination that a defendant is incompetent, the trial court must either commit the defendant under article 46B.073 or release the defendant on bail under article 46B.072. *Id.* art. 46B.071 (West 2006). If the trial court has determined that the defendant is not dangerous and may be safely treated on an outpatient basis, the trial court can release the defendant on bail. *Id.* art. 46B.072(a)(1) (West Supp. 2010) (directing that when charged with a felony offense, "the court[] *may* release on bail a defendant found incompetent to stand trial" (emphasis added)). If the trial court opts not to release the defendant on bail, the trial court, based on competent medical or psychiatric testimony or an expert's report, "*shall* commit" the defendant to a mental health or residential care facility for up to 120 days. *Id.* art. 46B.073(a),(b) (West Supp. 2010) (emphasis added); *see also* Tex. Code Crim. Proc. Ann. art. 46B.074 (West 2006) (explaining that a defendant may only be committed to a mental health facility or residential care facility on competent medical or psychiatric testimony or an expert's

report). Under article 46B.073(c), the trial court's discretion to release a defendant on bail is further limited when the defendant stands charged with one of the offenses specified in article 17.032(a), which includes the crime of indecency with a child. *See* Tex. Code Crim. Proc. Ann. art. 46B.073(c) (directing that, in certain cases, including indecency with a child, a trial court "shall enter an order" committing a defendant to a maximum security unit, agency of the United States operating a mental hospital, or to a Department of Veterans Affairs hospital); Tex. Code Crim. Proc. Ann. art. 17.032(a) (West Supp. 2010).

Following a period of commitment of up to 120 days, if the trial court finds the defendant to be competent, the "criminal proceedings against the defendant may be resumed." *Id.* art. 46B.084(d) (West Supp. 2010). The statutory provisions regarding the commitment proceedings include provisions indicating that the Legislature contemplated what might occur if treatment failed to restore the defendant to competency. On resumption of the proceedings, if the trial court determines that the defendant is still incompetent, and if the State chooses not to dismiss all the charges against the defendant, the trial court is required to hold a hearing to determine whether the defendant should be ordered to submit to mental health services. *See id.* art. 46B.084(e); *see also* Tex. Code Crim. Proc. Ann. art. 46B.101-.117 (West 2006 & Supp. 2010). If the State chooses to dismiss all charges, the trial court is required to determine "whether there is evidence to support a finding that the defendant is either a person with mental illness or a person with

mental retardation.” *See* Tex. Code Crim. Proc. Ann. art. 46B.151(a) (West 2006); Tex. Code Crim. Proc. Ann. art. 46B.084(f).

Analysis

In his appeal, Schmidt argues that the trial court was required to release him on bail because the medical evidence demonstrated that he will not be restored to competency. *See* Tex. Code Crim. Proc. Ann. art. 46B.073(b). However, the objective of treatment, whether the incompetent person is allowed bail or is sent to a facility like Rusk State Hospital, is to allow the incompetent defendant to regain his “competency to stand trial[.]” *Compare* Tex. Code Crim. Proc. Ann. art. 46B.072(a) *with* Tex. Code Crim. Proc. Ann. art. 46B.073(b).

Further, the fact that the goal is to attain competency reflects that the Legislature was aware that the treatment available would in some cases not be successful. Even if the prospects of restoring Schmidt to being competent to stand trial is unlikely, the trial court is empowered by the provisions in issue to commit an incompetent defendant for the limited period provided by the statute in an effort to restore the defendant’s competency. In this case, the trial court had reports by experts and the parties agreed that Schmidt was incompetent to stand trial. *See* Tex. Code Crim. Proc. Ann art. 46B.074. Because Schmidt was determined to be incompetent, the trial court had two options; either to commit Schmidt for a period not to exceed 120 days “for further examination and treatment toward the specific objective of attaining competency to stand trial[.]” or to release

Schmidt on bail. *See id.* arts. 46B.071, 46B.072, 46B.073. Because Schmidt had been indicted for indecency with a child—an article 17.032(a) offense—the trial court was further restricted to committing Schmidt to a maximum security unit of a facility like Rusk State Hospital.¹ *See id.* arts. 46B.073(c), 17.032(a).

In summary, the trial court is authorized by the Legislature to commit persons who are incompetent to stand trial for periods not to exceed 120 days, with the object of restoring the incompetent’s competency, even if that objective will not ultimately be attained. *See id.* arts. 46B.071, 46B.073(b). We are not persuaded that the trial court’s has no discretion to commit an incompetent defendant for the types of treatments intended to restore a person’s competency when the evidence tends to show that the treatment will ultimately not be successful. Further, the record does not demonstrate that Schmidt was not a danger to others or that he could be safely treated on an outpatient basis and restored to competency, both of which conditions are required before a trial court releases an incompetent defendant on bail. *See id.* art. 46B.072(a)

Based on the record before us, Schmidt has not shown that the trial court abused its discretion in denying his request for release. With respect to Schmidt’s claim that the trial court’s commitment orders violate his constitutional rights, the United States

¹The parties do not dispute that Rusk State Hospital qualifies as a provider authorized to treat defendants charged with indecency with a child. *See Tex. Code Crim. Proc. Ann.* art. 46B.073(c) (West Supp. 2010) (requiring that defendants charged with certain offenses and who are being committed to a mental health facility to be sent to certain treatment facilities that include a “maximum security unit of any facility designated by the department”).

Supreme Court has recognized that the government has an important interest in bringing to trial an individual accused of a serious crime, and in attempting treatments aimed at restoring the defendant's competency. *See generally Sell v. United States*, 539 U.S. 166, 179-80, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003). Schmidt does not argue that he was not charged with a serious crime. We overrule Schmidt's arguments, and we affirm each of the trial court's orders denying Schmidt's applications seeking writs of habeas corpus. We also deny the State's motion to dismiss Schmidt's appeals on the ground that his appeals are moot because he is no longer being held by the sheriff.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on October 20, 2011
Opinion Delivered November 9, 2011
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Before McKeithen, C.J., Gaultney and Horton, JJ.