

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	NO. 64229-4-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	UNPUBLISHED OPINION
JODY EDWARD SANDS,)	
)	
Appellant.)	FILED: May 31, 2011
)	

Leach, A.C.J. — Jody Edward Sands appeals his conviction for second degree murder with a deadly weapon (domestic violence). Sands contends that he was not competent to stand trial because his mental illness prevented him from entering a plea of not guilty by reason of insanity (NGI). Because the unchallenged trial court findings establish that Sands understood the nature of the proceedings against him and had the ability to assist in his own defense, we hold that the trial court did not abuse its discretion in finding Sands competent to stand trial. We affirm.

FACTS

On January 4, 2008, the Snohomish County prosecutor charged Sands with second degree murder with a deadly weapon (domestic violence) for

causing the death of his grandfather by hitting him in the head with the blunt side of an ax.

At arraignment, Sands's counsel raised the issue of Sands's competency. The court continued the arraignment and ordered a 15-day commitment to assess Sands's competency to stand trial. Two doctors at Western State Hospital (WSH), Judith Kirkeby, PhD, and Sarah Leisenring, MD, both concluded that Sands was not competent at that time. The court then committed Sands to WSH for 90 days for observation, evaluation, and treatment. After Dr. Lori K. Thiemann, a licensed psychologist, evaluated Sands, she wrote a forensic psychological report stating that while Sands might have possessed the capacity to understand the nature of the charges against him, he lacked the capacity to assist in his defense. Based on this report, the court entered an order committing Sands for an additional 90 days.

During this second 90-day period, the court also entered an order authorizing WSH to forcibly medicate Sands to restore him to competency. At the end of the 90 days, Dr. Thiemann reported that "Mr. Sands continue[d] to lack the capacity to understand the nature of the charge against him and to assist his counsel in his own defense." The court again found that Sands was not competent to stand trial and committed him to WSH for an additional 180 days.

Sands's mental condition eventually improved. On February 25, 2009, Dr. Thiemann filed a forensic psychological report declaring Sands competent to

stand trial. In Thiemann's opinion, Sands had average to above average intelligence but suffered from paranoid schizophrenia and displayed strong narcissistic and antisocial personality traits. When medicated, Sands's psychotic symptoms remitted, although his antisocial personality traits persisted. Thiemann reported that Sands, in his medicated state, understood the nature of the charges against him and evidenced an ability to assist in his defense. But if Sands stopped taking his medication, which he threatened to do once released from the hospital, he would psychiatrically decompensate, and his legal capacities would become impaired.

On March 3, the State filed a motion seeking authorization to continue to forcibly medicate Sands while he remained at WSH pending an independent competency evaluation. The following day, the court granted the motion and continued the competency hearing. Sands, however, refused to meet with Lee Gustafson, the licensed psychologist scheduled to conduct the evaluation.

A competency hearing was held in late April and early May. The court considered Thiemann's forensic report and testimony from Thiemann, Gustafson, and Sands. Thiemann had not seen Sands since filing her February report. She testified that at the time of filing this report, she had enough information to make a full and fair assessment of Sands's competency to stand trial. She reviewed police reports and treatment records, applied a portion of a competency assessment instrument, consulted with Sands's treating psychiatrists, and interviewed Sands on three separate occasions. According to

Thiemann, Sands had a very good understanding of his legal peril, the charges against him, and the basic operations of the court. And although he held a number of unorthodox beliefs, none of them would interfere with his capacity to assist in his defense.

Gustafson testified that he had met Sands but had not diagnosed him. Gustafson agreed that Sands likely suffered from paranoid schizophrenia. He formed this opinion after meeting with defense counsel and reviewing the treatment records and forensic reports. Gustafson also testified that Sands understood the charges against him and the basic operations of the court system.

Sands testified that he understood that he was committed to WSH for competency assessment and that he has been diagnosed with a mental illness but denied being mental ill. Sands explained that he was no longer opposed to meeting with Gustafson because he wanted to be found competent. Sands stated that he could be committed to a mental hospital if found not guilty by reason of insanity or he could be sentenced to a period of confinement if convicted. Sands discussed his strongly held belief that the State had insufficient evidence to convict him. Sands indicated that if convicted, his sentence would likely be in the 14-year range as opposed to 20 years to life because he had no prior convictions. He stated that he would not remain in confinement for the period prescribed by law because the world would end in 2012 or he would remove himself from prison.

Gustafson testified again after hearing Sands's testimony. According to Gustafson, he still could not form a complete opinion as to Sands's competency to stand trial. Gustafson observed that Sands's willingness to consider civil commitment indicated that his condition had improved; however, his refusal to admit his mental illness impeded his ability to assist his attorney in exploring possible defenses. Gustafson stated that Sands would likely become increasingly stable and able to consider mental illness defenses if he remained on medication for a longer period of time.

Thiemann also gave additional testimony after listening to Sands's testimony. She stated that Sands's testimony confirmed her opinion that he was competent to stand trial. Thiemann highlighted Sands's ability to stay on topic and noted that he did not appear to suffer from psychotic intrusions into his thought processes.

The court found Sands competent to stand trial. In its written findings of fact and conclusions of law, the court stated that Sands had a long-standing history of mental illness, including at least a 10-year diagnosis of paranoid schizophrenia, but adamantly denied suffering from any mental illness. The court also noted that Sands believed he had a 99 percent chance of acquittal but that this estimate was "overly optimistic" in light of the strength of the State's evidence and the apparent absence of the possibility of an NGI plea. The court observed that Sands held a firm belief that the world would end in 2012¹ and that

¹Because the Mayan calendar ends on December 21, 2012, Sands, and

he would spend no more than 3 years in prison or in a mental hospital if confined. The court found that Sands understood the nature of the proceedings, that he would be confined if found guilty, and that an NGI plea was a defense available in a criminal case. The court found that Sands was able to assist in his own defense as he appeared willing to cooperate with his attorney and was able to make decisions regarding alternative defenses, even if his mental illness impacted those decisions.

Sands waived his right to a jury trial, and the trial court found Sands guilty as charged. In consideration of the major role that mental illness played in the case, the court imposed an exceptional downward sentence.

Sands appeals.

STANDARD OF REVIEW

This court reviews a trial court's competency decision under an abuse of discretion standard.² A trial court abuses its discretion when its decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons."³

ANALYSIS

In Washington, "[n]o incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity

others, believe that the world will end on that day.

² State v. Ortiz, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985); State v. Hicks, 41 Wn. App. 303, 306, 704 P.2d 1206 (1985).

³ State v. Cross, 156 Wn. App. 568, 580, 234 P.3d 288 (2010) (quoting State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

continues.”⁴ RCW 10.77.010(14) defines “incompetency” as “lack[ing] the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.” Accordingly, the test for competency to stand trial is whether the accused (1) is capable of understanding the nature of the proceedings against him and (2) is able to rationally assist his legal counsel in his defense.⁵

The parties agree that Sands understood the nature of the proceedings against him, including the charges and the duties of the judge, prosecutor, and defense attorney. Sands challenges only the court’s determination that he was able to assist in his defense. According to Sands, he was unable to assist in his defense because he was not “rational” when he chose to forgo an NGI plea. As evidence, he points to his insistence that he did not suffer from a mental illness, his overconfidence in his chance for acquittal, and his belief the world would end in 2012. In response, the State argues that because Sands communicated rationally with his attorney, had a good working relationship with her, and could make decisions regarding alternate defenses, albeit decisions impacted by his mental illness, he was able to rationally assist in his defense. We agree with the State.

RCW 10.77.010(14) codifies the common law rule that “[a] person accused of a crime is held to be legally competent to stand trial if he is capable

⁴ RCW 10.77.050; State v. Wicklund, 96 Wn.2d 798, 800, 638 P.2d 1241 (1982).

⁵ Wickland, 96 Wn.2d at 800.

of properly understanding the nature of the proceedings against him and if he is capable of rationally assisting his legal counsel in the defense of his cause.”⁶

Washington courts have continued to hold that an ability to rationally assist remains a basic requirement of competency.⁷

However, this ability to assist element is a “minimal requirement”—the defendant needs only to appreciate his peril and communicate rationally with counsel.⁸ For example, in State v. Ortiz,⁹ the defendant had an IQ in the 49 to 59 range, did not know the shape of a ball, could not name four presidents, thought Henry Wadsworth Longfellow was Jesus, and believed that a week was made up of only one day. The accused also lacked the ability to consult with his counsel on trial strategy.¹⁰ Our Supreme Court affirmed the trial court determination that Ortiz was competent and rejected the argument that a defendant must be able to help with trial strategy to be competent.¹¹ It noted that Ortiz understood the basic operations of the courtroom and understood that the prosecutor would try to convict him. He also had the capacity to recall past facts and relate those facts to his attorney.¹²

⁶ State v. Israel, 19 Wn. App. 773, 776, 577 P.2d 631 (1978) (quoting State v. Gwaltney, 77 Wn.2d 906, 907, 468 P.2d 433 (1970)).

⁷ See, e.g., State v. Marshall, 144 Wn.2d 266, 281, 27 P.3d 192 (2001) (“A person is not competent at the time of trial, sentencing, or punishment if he is incapable of properly appreciating his peril and of rationally assisting in his own defense.”).

⁸ State v. Harris, 114 Wn.2d 419, 429-30, 789 P.2d 60 (1990); see also Marshall, 144 Wn.2d at 281.

⁹ 104 Wn.2d 479, 482, 706 P.2d 1069 (1985).

¹⁰ Ortiz, 104 Wn.2d at 483.

¹¹ Ortiz, 104 Wn.2d at 483-84.

The result in Ortiz is not unique. In State v. Hahn¹³ this court affirmed a trial court determination that a paranoid schizophrenic was competent to stand trial for second degree felony murder despite his delusional claims that he worked as an undercover agent. When the Supreme Court reviewed this decision, it noted that its recent decision in Ortiz had rejected a claim that competency to stand trial included an ability to understand and choose among alternative defenses.¹⁴

Because competency to stand trial does not require an ability to suggest defense strategy or choose between alternate defenses, it follows that a defendant's refusal to enter an NGI plea, when available, provides an insufficient basis for reversing a trial court's competency determination. The following considerations support this conclusion.

A decision not to enter an NGI plea when one is available does not necessarily demonstrate that the accused is incompetent to stand trial. As our Supreme Court has recognized, rational reasons exist for not entering this plea. The plea may conflict with some other defense the accused wishes to assert, the accused may consider the conditions of a mental hospital more objectionable than the conditions in prison, the accused may consider the stigma of insanity more damaging than a criminal conviction, or the accused may oppose an NGI

¹² Ortiz, 104 Wn.2d at 482-83.

¹³ 41 Wn. App. 876, 879-80, 707 P.2d 699 (1985), rev'd on other grounds, 106 Wn.2d 885, 726 P.2d 25 (1986).

¹⁴ Hahn, 106 Wn.2d at 894.

plea because he considers it a tacit admission of guilt.¹⁵

Additionally, Washington courts may not impose an NGI defense on an unwilling defendant, even if the court believes that it is to the defendant's benefit.¹⁶ In part, this reflects "the belief that basic respect for a defendant's individual freedom requires [Washington courts] to permit the defendant himself to determine his plea."¹⁷ Thus, once the court is satisfied that the defendant has the capacity to understand the nature of the proceedings and rationally communicate with his counsel, the choice to enter or not to enter an NGI plea is his, as are the consequences of that decision.

In sum, Sands asks this court to change the competency test by adding a third requirement—that a defendant must be able to assist with trial strategy by having the capacity to choose to enter an NGI plea. Because this request conflicts with controlling precedent, we reject it.

Because Sands does not challenge the trial court's findings of fact, we must next decide whether those findings support its conclusion that Sands was competent to stand trial. The trial court found that Sands understood the nature of the charge against him, that the purpose of the court proceedings was to resolve criminal charges against him, that he was entitled to a jury trial, that a judge would preside over the trial, that the State was trying to convict him, and that his attorney was provided to act on his behalf. He also understood that an

¹⁵ State v. Jones, 99 Wn.2d 735, 743, 664 P.2d 1216 (1983).

¹⁶ Jones, 99 Wn. 2d at 743-44.

¹⁷ Jones, 99 Wn.2d at 743.

NGI plea was available as a defense but chose not to pursue this defense because of his belief that he did not suffer from a mental illness. He also understood that if found not guilty by reason of insanity, he would be committed to a mental hospital. Although he believed he had a 99 percent chance of being acquitted, he understood that others, including the deputy prosecuting attorney and his own attorney, believed the facts of his case to be different than he believed them to be. The trial court also found that Sands had the ability to assist his counsel by cooperating with counsel and discussing his case with her.

These findings are sufficient to support the trial court's conclusion that Sands was competent to stand trial. They satisfy the requirements that Sands understand the nature of the proceedings against him and be capable of rationally assisting his legal counsel in the defense of his case, as our Supreme Court has defined that ability to assist.

Next, Sands asserts in a statement of addition grounds that the prosecution failed to prove the requisite intent for second degree murder (domestic violence). He alleges that he only intended to "knock out" or "assault" his elderly grandfather with the blunt side of the ax, not kill him.

A sufficiency challenge admits the truth of the prosecution's evidence and all reasonable inferences that can be drawn from it.¹⁸ Sufficient evidence supports a conviction if, after viewing all the facts and reasonable inferences in the light most favorable to the prosecution, any rational trier of fact could find the

¹⁸ State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

elements of the crime beyond a reasonable doubt.¹⁹ The law presumes that an actor intends the natural and foreseeable consequences of his conduct, and a trier of fact may infer criminal intent where it is plainly indicated as a matter of logical probability.²⁰

Here, Sands was found guilty under RCW 9A.32.050 (1) (a), which states that a person commits second degree murder when he causes the death of a person “[w]ith intent to cause the death . . . but without premeditation.” The victim suffered multiple wounds to the shoulder and back of his head. Officer Maiya Atkins testified that after she advised Sands of his Miranda²¹ warnings, Sands told her he hit the victim with the blunt side of the ax multiple times. At the police station, Sands was again advised of his Miranda warnings, and Sands stated that he hit the victim because he wanted to. Because death is a natural and foreseeable consequence of inflicting multiple blows to a person’s head with the blunt side of an ax, a rational trier of fact could conclude that Sands intended to kill his grandfather under RCW 9A.32.050(1)(a).

¹⁹ State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993).

²⁰ State v. Perez-Cervantes, 141 Wn.2d 468, 481, 6 P.3d 1160 (2000) (quoting State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997)).

²¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

We, therefore, affirm.

Leach, A.C.J.

WE CONCUR:

Schiveller, J.

Appelwick, J.