

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 27957-0-III
)	
Respondent,)	
)	
v.)	Division Three
)	
ROY ALAN WOLFE,)	
)	
Appellant.)	UNPUBLISHED OPINION

Korsmo, J. — Roy Wolfe appeals his 365-day sentence for violation of a restraining order, arguing that the trial court should have *sua sponte* ordered a mental competency evaluation before sentencing. The court’s inquiry with counsel was a sufficient basis for assuaging any concerns about Mr. Wolfe’s competency. We affirm.

FACTS

Mr. Wolfe’s marriage to his wife, Debra Wolfe, was dissolved and a permanent restraining order was entered in 1998. In 2000, Mr. Wolfe was convicted for violating the order on three separate occasions. The current charge arose when he approached Ms.

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Wolfe at a gas station in Endicott on January 26, 2009, and handed her a whirling lawn ornament. He asked her not to have him arrested. She reported the incident to police and Mr. Wolfe was arrested.

He was charged with felony violation of a restraining order. He waived jury trial and proceeded to bench trial. The court found him guilty of the lesser included offense of gross misdemeanor violation of a restraining order after it ruled that the prior judgment and sentence did not show that Mr. Wolfe had been represented by counsel.

Debra Wolfe appeared at sentencing and read the court a letter explaining that Mr. Wolfe had been mentally ill or brain damaged due to a logging injury many years before she met him. Before the injury he had obtained a degree in agricultural education and taught school. Ms. Wolfe asked the court to require Mr. Wolfe to take anti-psychotic medications in order to help him slow down and focus. He had refused such medications over the years. If he did not take medication, Ms. Wolfe was convinced that Mr. Wolfe would end up homeless and sleeping under bridges or in his car.

Defense counsel responded to Ms. Wolfe's comments in his initial remarks to the court:

He's clearly competent. Had some issues early on about competency, but if I can get him to focus he can talk about the facts; that's not an issue. There are clearly mental health issues, but I don't believe they go to capacity.

Report of Proceedings (RP) 58. The court asked if counsel had sought an examination of his client. Defense counsel replied that he had decided it was not necessary. RP 58-59.

Mr. Wolfe responded to the comments in his allocution. He told the judge he was not mentally ill and had never slept in a car. His statement was rambling and only somewhat responsive to Ms. Wolfe's comments. His counsel interrupted and told him to address his education and background. Mr. Wolfe did so for a time before rambling again. He also explained why he asked Ms. Wolfe not to have him arrested.

The court imposed 365 days in the Whitman County jail. Mr. Wolfe responded, "I don't like that." RP 63. He started rambling into nonresponsive comments again, and his counsel interrupted, saying "Roy. Not relevant." RP 64. Mr. Wolfe answered: "Three hundred and sixty five days? I could be out working." *Id.* He then started talking about his children. *Id.* The trial court stated that while it believed the sentence was harsh, Mr. Wolfe had not responded to earlier court warnings about contacting Ms. Wolfe, so it was time to "drop the hammer." RP 65.

Mr. Wolfe then timely appealed to this court.

ANALYSIS

The sole issue presented by this appeal is whether the trial court should have *sua sponte* ordered an inquiry into Mr. Wolfe's competency after his ex-wife's comments and

his disjointed response. The court did inquire about the situation and received counsel's assurance that nothing more was necessary. Given the facts of this case, there was sufficient inquiry.

Respondent argues that this case does not involve an issue of manifest constitutional error that can be reviewed for the first time on appeal. RAP 2.5(a). We do not agree. As counsel for appellant points out, due process does not allow a person to be tried or sentenced for a crime if they are incompetent to stand trial.¹ *Godinez v. Moran*, 509 U.S. 389, 396, 125 L. Ed. 2d 321, 113 S. Ct. 2680 (1993). Competency involves the question of whether a defendant understands the nature of the proceedings and has the current ability to consult with his lawyer. *Id.* This is a manifest constitutional issue that can be considered. RAP 2.5(a).

“Whenever . . . there is reason to doubt [a defendant's] competency, the court on its own motion or on the motion of any party shall” order an evaluation. RCW 10.77.060(1)(a). A court's ruling on whether to order a competency examination is reviewed for abuse of discretion. *State v. Heddrick*, 166 Wn.2d 898, 903, 215 P.3d 201 (2009). A trial court abuses its discretion when it acts on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775

¹ RCW 10.77.050 similarly provides: “No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.”

(1971).

Mr. Wolfe argues that his disjointed statements put his competency at issue. We agree that his commentary gave the trial court reason to inquire about his competency. Mr. Wolfe's counsel explained the situation — although Mr. Wolfe certainly had mental health issues, he was competent. He understood the nature of the proceedings against him and was able to communicate with counsel, even if he needed reminders to “focus” on the problem at hand. Mr. Wolfe's statements before the court confirmed his counsel's assessment. Mr. Wolfe addressed some of Ms. Wolfe's comments before diverging off into other areas. He returned to the topic when requested by counsel before again losing his way. When the sentence was pronounced, Mr. Wolfe immediately responded and showed that he knew what the court had done. He also recognized that a consequence of the sentence would be that he could not work and make money. Mr. Wolfe's behavior in court showed that he understood the nature of the proceedings and was able to communicate about it.² He met the standard for competency.

We cannot find that the trial court abused its discretion on this record. The record reflects that although Mr. Wolfe has mental health issues, he was aware of and responsive to his setting. The trial court did not err in agreeing with trial counsel's assessment of his

² Similarly, his initial request to Debra Wolfe that she not have him arrested when he contacted her, showed that he knew he was not supposed to contact her.

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client's condition.

The conviction is affirmed.

A majority of the panel has determined this opinion will not be printed in the

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Washington Appellate Reports, but it will be filed for public record pursuant to RCW
2.06.040.

Korsmo, J.

WE CONCUR:

Brown, A.C.J.

Sweeney, J.