

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 4, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 02-2795-CR

Cir. Ct. No. 00-CF-259

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THOMAS M. SCHOTTLER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for St. Croix County: SCOTT R. NEEDHAM, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Thomas Schottler appeals a judgment convicting him of first-degree reckless injury and aggravated battery. He argues that his trial counsel was ineffective by failing to question Schottler's competency to stand trial. Because we conclude that counsel had no reason to doubt Schottler's

competency, we reject that argument and affirm the judgment of conviction and the order denying Schottler's postconviction motion.

¶2 The test for whether counsel was ineffective by failing to challenge Schottler's competency is whether counsel had objective reason to doubt his competency. See *State v. Johnson*, 133 Wis. 2d 207, 220, 395 N.W.2d 176 (1986). That test presents a question of constitutional fact that this court decides without deference to the trial court. See *State v. Haskins*, 139 Wis. 2d 257, 265-66, 407 N.W.2d 309 (Ct. App. 1987). A defendant is incompetent if he lacks substantial mental capacity to understand the proceedings or assist in his own defense. See WIS. STAT. § 971.13(1).¹

¶3 Schottler's trial attorney, Aaron Nelson, had no reason to doubt Schottler's competency to stand trial. Schottler was examined by psychiatric experts before trial because he pled not guilty by reason of mental disease or defect. Although that was not the purpose of the examination, Dr. Frederick Fosdal opined that Schottler was competent to stand trial. Nelson met with Schottler approximately fifty times before trial and testified at the postconviction hearing that he "certainly thought [Schottler] understood the nature of the proceedings." Schottler had not expressed or showed any difficulty understanding the theory of defense or the law related to it. Nelson did not question Schottler's competency until Schottler was convicted and jailed pending sentencing when counsel noticed a deterioration in his mental state. Counsel then asked for an examination of Schottler's competency to proceed. Following a

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

hearing, the trial court determined that Schottler was competent to proceed with sentencing.

¶4 Schottler relies on psychological experts' statements that he was anxious, uncertain, fearful, depressed, paranoid, delusional, rigidly self-controlling and lacking insight. Some of these conditions were not displayed before or during the trial. In addition, not every mentally ill defendant is incompetent. *See State ex rel. Haskins v. Dodge County*, 62 Wis. 2d 250, 264-66, 214 N.W.2d 575 (1974). Nelson's personal experience with Schottler and Fosdal's pretrial conclusion that Schottler was competent establish that Schottler's mental illnesses did not affect his ability to understand the proceedings or participate in his defense. Likewise, Schottler's numerous voice mail messages to his attorney, his behavior at trial, and his request to see a psychologist or psychiatrist to deal with his anxiety do not suggest inability to understand the proceedings or participate in his defense.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

