

NO. 66673-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

DARREN WOODLEY,

Appellant.

REC'D
JUL 21 2011
King County Prosecutor
Appellate Unit

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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Sharon Armstrong, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court erred in denying appellant's motion to withdraw his guilty plea. CP 74.

2. The court erred in finding appellant was competent. CP 80 (Finding of Fact 10).

3. The court erred in finding appellant's assertions about his mental status were a ploy to seek relief from his exceptional sentence. CP 80 (Finding of Fact 11).

Issue Pertaining to Assignments of Error

A person must be competent to plead guilty or be sentenced. Whenever there is reason to doubt competency, the court must order an evaluation. Did the court err in denying appellant's motion to withdraw his guilty plea when it relied on lay opinions by counsel instead of an expert psychological evaluation that raised doubts as to competency?

B. STATEMENT OF THE CASE

1. Procedural Facts

The King County prosecutor charged appellant Darren Woodley with first-degree assault in 2005. CP 1. In 2008, he pled guilty to one count each of first-degree assault and second-degree assault. CP 15, 17. The court imposed a 360-month exceptional sentence on April 6, 2009. CP 38, 41. In October 2010, Woodley moved to withdraw his guilty plea.

CP 53. The court denied the motion, and notice of appeal was timely filed. CP 81, 118.

2. Substantive Facts

Woodley has a history of hospitalization for mental health problems in several states, including Hawaii and dating back to 1995. CP 88-89; Supp. CP¹ ____ (Sub no. 227A, Medical reports/Jail health records, 12/30/2010). In 2007, defense counsel Victoria Freer obtained funding for a psychological evaluation. 4RP² 3-4. Woodley did not want to work with the evaluator and asked that a person of color be appointed to evaluate him. 4RP 8. Although it was difficult, his attorney found an appropriate evaluator. 4RP 9. But when the Office of Public Defense denied funding, the issue was simply dropped. 4RP 9.

Woodley's subsequent attorney Jennifer Cruz reviewed his medical records, but did not request a competency evaluation before his plea hearing. 4RP 12. At the plea hearing, Woodley claimed to understand and asked to confer with counsel when he did not. Supp. CP ____ (Sub no. 224, State's Response to Defendant's Motion, 2/4/2011) (attached transcript of plea hearing).

¹ A supplemental designation of clerk's papers was filed on July 21, 2011.

² There are four volumes of Verbatim Report of Proceedings referenced as follows: 1RP – Nov. 4, 2008; 2RP – Apr. 2, 2009; 3RP – Feb. 10, 2010; 4RP – Dec. 30, 2010.

Before sentencing in 2009, Cruz arranged a mental health evaluation for mitigation purposes. 4RP 12. Dr. Benjamin Johnson concluded, “there were some obvious cognitive processing issues as exhibited by rather frequent thought derailments.” CP 105. The mental testing suggested “mental clouding, poor concentration, and distractibility.” CP 105. Dr. Johnson found Woodley had a “moderate to moderately high” risk of suicide. CP 106. Dr. Johnson attempted to complete the Minnesota Multiphasic Personality Inventory-2, but Woodley could not sustain himself to complete the lengthy questionnaire. CP 107. Woodley’s symptoms were “highly indicative of an active paranoid process. It suggests a psychological fragility that is extremely palpable, most likely psychotic.” CP 108. Johnson noted Woodley, “takes medication to control his auditory hallucinations with limited effect. He continues to think that others are out to harm him and thus is mistrustful of the motives of others. He has suicidal ideation and a history of behaving in concert with his hallucinations.” CP 108. Dr. Johnson concluded Woodley’s self-report “strongly supports diagnosis of ongoing psychiatric difficulties that have a deteriorating course.” CP 109.

Dr. Johnson diagnosed Woodley with Schizoaffective Disorder, Depressive Type, Intermittent Explosive Disorder, rule out Cognitive Disorder, Not Otherwise Specified, and Antisocial Personality Disorder. CP

109. His prognosis for recovery was guarded because Woodley's "emotional issues are long-standing with significant signs of cognitive decline. His comprehension and acute judgment, distinguishing reality from his delusional experiences and ideas is most likely to decline." CP 109. He recommended that Woodley, "should be required to comply with medications to manage both his physical and mental conditions." CP 111.

At the sentencing hearing, Woodley's attorney claimed to "know that he, he is very sane in terms of competent and incompetent." CP 15.

However, she also informed the court:

Mr. Woodley currently indicates that he, he hears voices, he has indicated that to me over a period of time. Whenever I would go to visit him he would say that he would hear voices when I was trying to talk to him and that at times they would be so loud that he would have to take a break from speaking with me so that he could gather his thoughts back. . . . Darren has not had the help that he needs. He obviously does suffer from some kind of a psychological abnormality. I know that he, he is very sane in terms of competent and incompetent. I don't think that Western State would have been a place, we had discussed some of the things in terms of this piece and that was not something because of the fact that if you, when you hear him speak, he is very articulate and he does have things that he would like to say to the Court. And so, your Honor, we are basing most of our recommendation on that the psychological evaluation does indicate over a long period of time, Mr. Woodley has suffered from mental illness.

2RP 15-16 (emphasis added).

Despite mentioning previously that Woodley, "does have things that he would like to say to the Court," when the time for allocution arrived, Cruz

informed the court Woodley would not speak because, “He did inform me that because he has not had his medications he is confused and does not know what it would be to say to the Court.” 2RP 19. The court imposed a 360-month exceptional sentence. CP 38, 41.

More than six months later, Woodley moved to withdraw his guilty plea. CP 53. His attached affidavit explained he was not provided the necessary medications at the King County Jail and thus was not competent to enter his plea. CP 55-57.

At the hearing on this motion, Cruz testified Woodley told her he was having auditory hallucinations. 4RP 16-17. However, she testified Woodley told her he could ignore the voices during their meetings. 4RP 16-17. Jail records showed Woodley was regularly provided medication for his hypertension and diabetes, but he refused psychiatric medication. Supp CP ____ (Sub no. 227A, Medical reports/Jail health records, 12/30/2010). Cruz and Freer both testified they never doubted Woodley was competent. 4RP 7-8, 14. No expert competency evaluation was ever performed.

The court concluded Woodley was not incompetent at the plea hearing or at sentencing and there was no information that would have led a reasonable judge to order an evaluation before proceeding. CP 81. The court found Woodley’s assertion of incompetence was fabricated as a ploy to seek relief from his exceptional sentence. CP 80. The court found, “At no

time did these two lawyers, or any attorney working on the case, report that defendant was responding to internal stimuli, was unable to focus, complained of racing thoughts, or otherwise manifested mood or thought disturbance.” CP 78.

C. ARGUMENT

THE COURT ERRED IN DENYING WOODLEY’S MOTION TO WITHDRAW HIS GUILTY PLEA.

When a “substantial question of possible doubt” exists as to the defendant’s competency, due process requires the trial court to conduct a competency hearing. State v. Hicks, 41 Wn. App. 303, 308, 704 P.2d 1206 (1985) (citing State v. Johnston, 84 Wn.2d 572, 576, 527 P.2d 1310 (1974)). Whether to order a competency evaluation or grant a motion to withdraw a guilty plea are generally within the trial court’s discretion. State v. Marshall, 144 Wn.2d 266, 280, 27 P.3d 192 (2001). But whenever there is reason to doubt competency, the procedures of RCW 10.77.060 must be followed. RCW 10.77.060.³ These procedures are mandatory, and failure to observe them violates due process. In re Pers. Restraint of Fleming, 142 Wn.2d 853, 863, 16 P.3d 610 (2001).

³ RCW 10.77.060(1) provides in pertinent part:

Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate at least two qualified experts or professional persons, one of whom shall be approved by the prosecuting attorney, to examine and report upon the mental condition of the defendant.

“An incompetent person may not enter into any plea agreement.” Id. at 864. Incompetence renders the plea involuntary, which constitutes a manifest injustice permitting withdrawal of a guilty plea. Marshall, 144 Wn.2d at 280-81. Therefore, when a defendant moves to withdraw a plea and presents evidence he was incompetent at the time of the plea, “the trial court must either grant the motion. . . or convene a formal competency hearing under RCW 10.77.060.” Id. at 281. Here, the court erred in denying Woodley’s motion to withdraw his guilty plea without ordering a formal competency evaluation because the court rejected doubts raised by the expert evaluation in favor of lay assessments.

a. Dr. Johnson’s Evaluation Shows Reason to Doubt Woodley’s Competency.

A person is incompetent when he is “incapable of properly appreciating his peril and of rationally assisting in his own defense.” Marshall, 144 Wn.2d at 281. The standard is the same for trial or a guilty plea. Id. Competency is a mixed question of law and fact, and, on appellate review, courts independently apply the law to the facts. Id.

Dr. Johnson did not believe Woodley was malingering. His cover letter states, “I found Mr. Woodley to have significant cognitive and psychological symptoms that made him unavailable to engage in many standardized psychological tests.” CP 101. He found Woodley was

“compliant with the evaluation process,” and determined, “the issues had more to do with his mental status than his willingness to participate.” CP 101.

Nor did Dr. Johnson attribute Woodley’s reluctance to provide details to deceit. The evaluation does state, “It was difficult to discern between his lacking information and his being evasive.” CP 105. However, in the same paragraph, Dr. Johnson observes, “[T]here were some obvious cognitive processing issues as exhibited by rather frequent thought derailments, forgetting what he was about to say, and having difficulty finding the correct word.” CP 105.

It is true Dr. Johnson stated Woodley’s “evasiveness or forgetfulness made it difficult to regard him as a reliable informant.” CP 106. But again, Dr. Johnson related that to Woodley’s psychological impairment and relied on it in drawing his conclusions. The very next sentence of his report states, “The information that was gleaned from these interviews provided valuable information about his psychiatric experience and current adaptive functioning.” CP 106.

Dr. Johnson noted his evaluation relied heavily on Woodley’s self-report, but did not indicate that undercut his diagnoses or observations. CP 108-09. On the contrary, he states the self-report, “strongly supports

diagnosis of on-going psychiatric difficulties that have a deteriorating course.” CP 109.

Dr. Johnson observed Woodley’s symptoms suggested “a psychological fragility that is extremely palpable, most likely psychotic.” CP 108. He diagnosed Woodley with schizoaffective disorder, intermittent explosive disorder, rule-out cognitive disorder, and antisocial personality disorder. CP 109. Dr. Johnson concluded Woodley’s “comprehension and acute judgment, distinguishing reality from his delusional experiences and ideas is most likely to decline.” CP 109. He was not asked to assess competency, so his failure to declare Woodley incompetent does not assuage the doubts raised by his diagnoses and observations. CP 102.

b. The Court Erred in Giving Greater Weight to Lay Opinion than to an Expert Psychological Evaluation.

The court erred in relying on opinions by counsel and the court itself when an expert evaluation cast substantial doubt on Woodley’s competence. See Marshall, 144 Wn.2d at 281-82. In Marshall, the trial judge made a competency decision based on the defendant’s demeanor and credibility. Id. at 273. The court “[h]eavily discount[ed] the testimony of Marshall’s neurologist, psychiatrist, and neuropsychologist,” and relied instead “on its own observations and on the observations of those who interacted with him at the time of the plea.” Id. at 280. The court declared, “This was error,”

and held the trial court erred in denying the motion to withdraw the guilty plea without ordering an evaluation because there was substantial evidence of incompetence. Id. at 280-81. The court vacated the plea and remanded for proceedings consistent with the opinion. Id. at 282. The same result should follow here because the court discounted Dr. Johnson's evaluation and chose to rely on its own and counsel's observations instead.

Counsel's opinions were insufficient to allay doubts about Woodley's competence. Cf. State v. Heddrick, 166 Wn.2d 898, 908, 908, 215 P.3d 201 (2009). In Heddrick, the court held stipulations to competence or counsel's representation that a client has been deemed competent by a medical professional might erase a court's doubts as to competency. Id. In that case, counsel raised a competency issue but then stipulated to competence after a professional evaluation declared Heddrick competent. Id. at 901.

Here, by contrast, Woodley's attorneys failed to raise a competency issue and no evaluation was performed. Counsel's opinions were not based on a professional competency evaluation. Counsel's other conduct also showed doubt as to competency. Freer claimed there was no doubt even though she went above and beyond to try to obtain a psychological evaluation. 4RP 7-9. Cruz claimed there was no doubt even though at sentencing she emphasized Woodley's mental illness and auditory

hallucinations. 2RP 15, 19; 4RP 14. Thus, counsel's opinions are insufficient to allay doubts raised by Dr. Johnson's professional evaluation.

In light of Dr. Johnson's evaluation, the court erred in relying on its own observations and those of counsel to find there was no doubt as to competency. The record shows reason to doubt Woodley's competency, and the court erred in denying his motion to withdraw his guilty plea without holding a formal competency hearing under RCW 10.77.060. Marshall, 144 Wn.2d at 281.

D. CONCLUSION

For the foregoing reasons, Woodley requests this Court reverse the trial court's order denying his motion to withdraw his guilty plea and remand with instructions to require a competency evaluation.

DATED this 21st day of July, 2011.

Respectfully submitted,

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COA NO. 66673-8-1

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 21ST DAY OF JULY, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] DARREN WOODLEY
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SIGNED IN SEATTLE WASHINGTON, THIS 21ST DAY OF JULY, 2011.

x *Patrick Mayovsky*