

NO. 66673-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,
Respondent,
v.
DARREN WOODLEY,
Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE JUDGE SHARON ARMSTRONG

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

One year after the defendant pled guilty to first-degree assault and second-degree assault, he filed a pro se motion claiming that he should be allowed to withdraw his plea of guilty because he was not competent at the time he entered his plea. A hearing was held on his motion. With his trial attorneys both testifying that in the extensive time they spent with the defendant, they saw no reason to doubt his competency, and with no expert testimony calling into doubt the defendant's competency, did the trial court correctly deny the defendant's motion to withdraw his plea?

B. STATEMENT OF THE CASE

On September 28, 2005, the defendant was charged with first-degree assault, a domestic violence offense. CP 1-5. After fleeing the state, the defendant was arrested in Oregon on October 24, 2005. CP ____, sub # 3. It was then discovered that the defendant had an extensive and serious domestic violence history and bail was set at \$1,000,000. Id. The defendant remained in custody throughout the pendency of his case. CP 20.

On January 8, 2008, as more facts were discovered, the State charged the defendant with first-degree assault, second-degree assault and second-degree rape of the same victim, with each count carrying the aggravating factors (1) that the offenses were domestic violence offenses that were part of an ongoing pattern of psychological, physical or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time, and (2) that the offenses manifested deliberate cruelty of the victim. CP 11-13; CP ____, sub # 161. The defendant was also charged with second-degree assault and felony harassment for crimes committed against a second victim. CP 11-13.

On November 7, 2008, the defendant entered a plea of guilty to counts I and II of the Information--the first-degree assault and second-degree assault charges. CP 17. He admitted to the aggravating factors on each count. CP 25. The plea agreement called for the defense to recommend no less than 180 months on count I, with the State recommending 240 months on count I. CP 20, 36. The defendant's standard range on count I was 129 to 171 months, with a maximum penalty of life. CP 18. The State recommended 20 months concurrent on count II. CP 20. All terms of the plea agreement were in writing, with the defendant

acknowledging that he had read the plea documents personally and that his attorney had also read the plea documents with him.

CP 26. The plea was accepted by the court after a full and complete colloquy was conducted in open court before the Honorable Judge Sharon Armstrong. CP 183-207.

Prior to sentencing, defense counsel had the defendant evaluated for sentence mitigation purposes. CP 201-02. The psychological evaluation was conducted by clinical psychologist Benjamin Johnson and presented to the court. 2RP¹ 14.

A redacted version of this report was designated to this Court.

CP 100-11.

On April 2, 2009, the defendant received an exceptional sentence of 360 months on count I, concurrent to 20 months on count II. CP 38-46.

On October 29, 2009, just short of one year from the time he entered his plea, the defendant filed a pro se motion to withdraw his plea of guilty. CP 53-68. In his motion, the defendant claimed,

¹ The verbatim report of proceedings is cited as follows: 1RP--12/4/08; 2RP--4/2/09; 3RP--2/10/10, and 4RP--12/30/10. A transcript of the plea colloquy that occurred on 11/7/08 was attached to the State's Response to Defendant's Motion to Withdraw Guilty Plea filed in the trial court. CP 127-207. The hearing was not separately transcribed for this Court. Thus, the transcript will be cited by its CP number.

among other things, that the King County Jail had been withholding psychotropic medications from him and that he had not been competent at the time he entered his plea. CP 55.

Attorney Spencer Hamlin was appointed to represent the defendant, and on February 10, 2010, a hearing was held to determine how to proceed on the defendant's motion. 3RP 1. Counsel for the defendant indicated that he might get the defendant evaluated for competency. 3RP 2. This was either not done, or, if the defendant was evaluated for competency, the evaluation was not provided to the trial court. The trial court cautioned counsel that the defendant was not an accurate reporter and that counsel should obtain records, such as jail records, to confirm or refute the defendant's allegations. 3RP 4.

On December 30, 2010, a hearing was held on the defendant's motion to withdraw his plea. The court heard the testimony of two of the defendant's attorneys, longtime criminal defense attorney (18 years) Victoria Freer, who represented the defendant for at least one year prior to the defendant pleading guilty, and longtime criminal defense attorney (14 years) Jennifer Cruz, who took over the case from Freer and represented the

defendant during the course of his plea and sentencing. 4RP 2-4, 10-11.

Freer testified that she knows the standard for competency, and that she would not hesitate to raise the issue if she believed there was reason to doubt competency. 4RP 7-8. Freer testified that she, and the many other attorneys who worked on the case with her, never had any doubts that the defendant was competent to stand trial. 4RP 7-8. She testified that the defendant knew the nature of the proceedings and that he was capable of assisting her in his defense. 4RP 7-8.

Freer also stated that she was well aware that the defendant had past hospitalizations for purported mental health reasons prior to the pendency of this case. 4RP 3. She said that she took steps to have a psychological evaluation done on the defendant, but said that when the defendant demanded that the evaluator be a person of color, the case was ultimately transferred to another attorney (Cruz) and the evaluation was not done. 4RP 4. With Freer testifying that she had no doubts as to the defendant's competency, it appears her purpose in attempting to obtain an evaluation was to investigate possible trial defenses, or for mitigation purposes, and not for competency. 4RP 7-8.

At the conclusion of her testimony, the court asked Freer about the possibility that the defendant was malingering and whether she ever observed "evidence that he was in mental decline." 4RP 9. Freer said she was not aware of any mental decline on the part of the defendant. 4RP 9.

Jennifer Cruz testified that during the time she represented the defendant, which included the time leading up to his plea through sentencing, "competency was never an issue in my mind." 4RP 12-13. Cruz testified that she was well aware of the standard for competency, had raised the issue many times in other cases, and that she would not have hesitated to raise the issue if she had any doubt the defendant was not competent. 4RP 13-14.

Cruz testified that she met with the defendant on multiple occasions, including meetings that would last for hours. 4RP 14. At these meetings, Cruz said the two would discuss trial strategies and witness testimony. 4RP 14. In fact, Cruz said, the defendant provided her with several letters in which he outlined different trial strategies and the testimony to be sought from various potential witnesses. 4RP 14. Cruz testified that the defendant "had a firm basis as to what he was charged with and knew what the alleged victim was alleging." 4RP 14. When asked if she knew of any

reason why the defendant could not assist in his defense, Cruz testified, "No. He is quite intelligent and a lot of his letters actually cited case law and were on point with regard to the issues that we were discussing." 4RP 14.

During the course of representing the defendant, Cruz obtained the medical records from prior occasions in which the defendant had been hospitalized for alleged mental health issues. 4RP 12. After the defendant pled guilty, Cruz had the defendant evaluated for sentence mitigation purposes, but not for competency, "because I didn't feel that there was a competency issue." 4RP 12. Cruz testified that none of the other attorneys who worked on the case with her ever expressed any doubt that the defendant was not competent. 4RP 15.

When asked about medications, Cruz said she was aware that the defendant was on medications due to a diabetic condition, but that he never expressed to her that the jail was withholding any medications from him. 4RP 16, 18. In fact, Cruz testified, "[h]e was getting his medicines." 4RP 16.

Cruz did say that on occasion, when she would meet with the defendant, he would profess that he was hearing voices, but she added that he would not lose track of the conversation and that when they would actually begin to have a conversation, there were no apparent breaks or problems in conversing. 4RP 17.

Following up on the defendant's claim that he had been hospitalized many times for mental health reasons, Cruz said that in many cases, there were no records of such hospitalizations. 4RP 19. In the records she was able to obtain, the records indicated that the defendant sought hospitalization mainly because it was cold outside and he needed a place to stay. 4RP 19. When released, the records indicated that the defendant would then seek out a vulnerable female from the hospital and end up going home with them. 4RP 19.

At the conclusion of the testimony, the court asked the defendant's counsel, Spencer Hamlin, if he had obtained the jail medical records as the court had suggested at an earlier hearing. 4RP 21. Hamlin said he had obtained the records. The court told counsel that she wanted to see the records before ruling. 4RP 22-24. They were provided to the court at a later date--prior to the

court's ruling. CP 208-1052. As the court would note in its findings, the records do not support the defendant's allegations.² CP 74-81.

The psychological evaluation arranged by Cruz and conducted by clinical psychologist Benjamin Johnson was for the purpose of "provid[ing] information regarding his psychological functioning." CP 101-02. At no point in the report did Johnson opine that the defendant did not understand the nature of the proceedings against him or that he could not assist in his defense. See CP 102-11. What the report did find was that the defendant was "reluctant to share substantive information in many important areas of inquiry." CP 102. In regards to determining his past and current mental status, Johnson said that the defendant "did not readily provide specific information when asked," and that "[i]t was difficult to discern between his lacking information and his being evasive." CP 105. In regards to conducting interviews with the defendant, Johnson stated that "his evasiveness or forgetfulness made it difficult to regard him as a reliable informant." CP 106. In regards to tests Johnson tried to administer, the defendant did not

² Hamlin also prepared an affidavit in support of the defendant's motion. Nowhere in his affidavit did Hamlin indicate that he observed anything about the defendant suggesting he was not competent. See CP 69-70.

complete the MMPI-2 (Minnesota Multiphasic Personality Inventory-2) because he claimed he could not focus. CP 107. Still, with the "self-report data" obtained, Johnson opined that the defendant suffers from schizoaffective disorder--depressive type, intermittent explosive disorder, cocaine abuse, and antisocial personality disorder.³ CP 109.

The jail medical records showed that during the three plus years the defendant was in jail pending trial he was not prescribed nor did he request, anti-psychotic medications and he was not denied any anti-psychotic medications. See 208-1052. He was not housed in the mental health unit, observable mental health issues were not noted, he denied having any mental health issues on multiple occasions and he never reported hearing voices. Id.; also see CP 79.

Based on the records provided and testimony of his prior attorneys, the trial court denied the defendant's motion to withdraw his plea. CP 74-81.

Additional facts are included below.

³ Johnson also opined that he could not rule out, but did not diagnose, cognitive disorder not otherwise specified. CP 109.

C. ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE DEFENDANT'S MOTION TO WITHDRAW HIS PLEA OF GUILTY

The defendant contends that the trial court erred in failing to grant his motion to withdraw his plea of guilty. Specifically, he claims that he was not competent at the time he entered his plea and that his trial counsel was ineffective for failing to request a competency evaluation at the time he entered his plea. This claim should be rejected. No evidence was ever presented that the defendant was incompetent or that his many trial attorneys had reason to doubt his competency.

A trial court will permit a defendant to withdraw a plea of guilty if withdrawal of the plea is necessary to correct a "manifest injustice." CrR 4.2(f). A manifest injustice exists where (1) the defendant did not ratify the plea, (2) the plea was not voluntary, (3) the defendant received ineffective assistance of counsel, or (4) the plea agreement was not kept. State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996). A manifest injustice is one that is obvious, directly observable, overt, and not obscure. State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). A claim that a defendant was not competent to enter a plea is equivalent to

claiming the plea was not voluntary. State v. Marshall, 144 Wn.2d 266, 281, 27 P.3d 192 (2001).

It is a "demanding standard" that the law places on a defendant to prove a manifest injustice, and a trial court must exercise great caution in setting aside a guilty plea once the required safeguards of CrR 4.2 have been met. Taylor, 83 Wn.2d at 596. A trial court's denial of a motion to withdraw a guilty plea is reviewed for an abuse of discretion. Marshall, 144 Wn.2d at 280.

A person is competent to stand trial if he has the capacity to understand the nature of the proceedings against him and can assist in his defense. RCW 10.77.010(15); State v. Ortiz, 119 Wn.2d 294, 300, 831 P.2d 1060 (1992). It is well settled that the law will presume competency rather than incompetency until satisfactory proof to the contrary is presented. Grannum v. Berard, 70 Wn.2d 304, 307, 422 P.2d 812 (1967). Requiring a defendant to prove his incompetence does not offend due process. Medina v. California, 505 U.S. 437, 446-49, 112 S. Ct. 2572, 120 L. Ed. 2d 353 (1992). If there is sufficient reason to doubt competency, a court must follow the requirements of RCW 10.77.060, order an evaluation and ultimately convene a formal competency hearing. Marshall, at 281.

The trial court has wide discretion in judging the mental capacity of a defendant to stand trial and deciding whether a competency evaluation should be ordered. In re Fleming, 142 Wn.2d 853, 863, 16 P.3d 610 (2001). Factors a trial judge may consider in determining whether or not to order a formal inquiry into competence include the defendant's appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel. Fleming, 142 Wn.2d at 863. A trial court's determination of whether to order an evaluation is reviewed under an abuse of discretion standard. Ortiz, 119 Wn.2d at 299.

In State v. Fleming, supra, the defendant faced multiple charges stemming from his bizarre behavior predicated on his belief that bikers and CIA agents were after him. Fleming, 142 Wn.2d at 857-58. Shortly after being charged, Fleming's counsel obtained funds for a psychological evaluation. Id. at 858. This evaluation concluded that Fleming was marginally competent, was unable to distinguish right from wrong, and suffered from psychosis and paranoia. Id. at 858.

A few months later, a second attorney sought funds for a mental health evaluation, stating that Fleming would be relying

upon a mental defense at trial. Id. at 858. This evaluation concluded that Fleming was "presently mentally incompetent to stand trial." Id. at 859. Shortly thereafter, Fleming entered a plea of guilty. Id. at 859.

On appeal, Fleming, like the defendant here, argued that he was not competent at the time he entered his plea. Id. at 860-61. The Supreme Court held that the trial court did not abuse its discretion in declining to order a competency evaluation. Id. at 863. The reason is that the evaluations questioning Fleming's competency were never presented to the trial court and Fleming never exhibited any behavior before the trial court suggesting competency was an issue. Id. at 863.

Similarly, here, at the time the defendant entered a plea of guilty, the court was not asked to have the defendant evaluated for competency, and the court had no information that there was any issue regarding the defendant's competency at the time of his plea. In addition, the defendant can point to no behaviors that would have, or were apparent, to the trial court suggesting that there was an issue regarding competency. To the contrary, the record of the plea hearing shows that the defendant acted appropriately during the taking of his plea, was fully engaged during the plea colloquy,

and when he had a question, he discussed any concerns he had with his attorney. See CP 183-206. In fact, when the defendant raised the issue of competency in his subsequent motion to withdraw his plea, the plea judge stated that "I only wish that my courtroom in Kent had been a video courtroom because I think it would be pretty evident that he was pretty high functioning on that occasion." 3RP 4. With this record, the court could not possibly have abused its discretion in failing to order an evaluation because there was no evidence before the court even suggesting the defendant was anything but competent. See Fleming, at 863.

In order to get around the fact that the trial court had no reason to believe competency was an issue, the defendant claimed below, and he claims on appeal, that his trial counsel was ineffective for failing to ask for a competency hearing or have the defendant evaluated before he entered a plea. But this claim also fails as counsel had no reason to doubt the defendant's competency. In fact, two of his attorneys testified post-trial that the defendant was fully competent, was fully aware of what was happening, and was fully capable of assisting in his defense, an

opinion that must be afforded considerable weight. State v. Lord, 117 Wn.2d 829, 901, 822 P.2d 177 (1991), cert. denied, 506 U.S. 856 (1992).

To sustain a claim of ineffective assistance of counsel, a defendant must show (1) that counsel's performance was deficient and (2) that the deficient performance prejudiced the defense. Fleming, at 865 (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). Again the Fleming case is instructive.

In Fleming, the Court addressed a similar claim and concluded that Fleming's trial attorney was ineffective. Fleming, at 866-67. In finding counsel was ineffective, the Supreme Court noted that defense counsel was aware of two expert opinions concluding that Fleming was incompetent and that counsel failed to provide the trial court with the evaluations or even raise the issue of competency. The Court held that under these factual circumstances, counsel's representation fell below an objective standard of reasonableness. Id. at 865-67. Further, the Court held that because the evaluations provided ample reason to suggest Fleming was not competent, there was a reasonable probability that

if counsel had informed the trial court of the evaluations, the plea would not have been accepted. Thus, the second prong of the Strickland test had been met. Id. at 866. Here, neither prong can be met.

First, trial counsel had no reason to doubt the defendant's competency. Cruz and Freer, both longtime criminal defense attorneys, testified that they had no doubt as to the defendant's competency. Cruz testified not only that the defendant had the ability to assist in his defense but that he was actually doing so. This fact alone seems impossible to overcome--a claim that the defendant was incompetent, i.e., that he could not assist in his own defense, when he was doing just that, assisting his attorney in his own defense. There was nothing known to defense counsel that suggests they were incompetent in not raising the issue of competency. While counsel was aware of a purported prior mental health history, the evaluations suggested that the defendant was a malingerer.⁴

⁴ Also of note, the defendant has a criminal history dating back to 1989 (see CP 35), convictions that could not have been entered if the defendant were not competent at those times.

In addition to failing to meet the performance prong of the Strickland test, the defendant cannot prove prejudice. The defendant relies primarily upon one thing to argue prejudice, the evaluation conducted by Benjamin Johnson. However, Johnson's report does not support the defendant's claim. Nowhere in the report--a report based on the defendant's questionable self-reporting--does Johnson opine, or even suggest, that the defendant did not have the capacity to understand the nature of the proceedings against him or was incapable of assisting in his own defense. Even if everything in Johnson's report were to be considered true, there is no nexus between Johnson's diagnosis and a claim of incompetency.

The fact that a defendant is mentally ill, even to levels of having extreme mental problems, does not necessarily demonstrate that the person is incompetent. See e.g., Lord, 117 Wn.2d at 901 (the trial court did not err in denying a request for a competency hearing, even though Lord exhibited signs of mental illness, including delusions of conversations with the devil wherein the devil asked him to drink a cup of blood to prove his own innocence); State v. Smith, 74 Wn. App. 844, 850, 875 P.2d 1249 (1994) (report indicated Smith suffered from multiple psychological

disorders but without evidence linking the psychological disorders to the capacity to plead guilty, the trial court did not err in denying Smith's motion to withdraw his plea of guilty), rev. denied, 125 Wn.2d 1017 (1995). There is simply nothing in Johnson's report that casts doubt on the defendant's competency or that can overcome the plethora of other evidence indicating that the defendant was fully competent at the time he entered his plea of guilty.

In arguing to the contrary, the defendant places great reliance on the case of State v. Marshall, supra. Marshall is clearly distinguishable.

Marshall pled guilty to aggravated murder over the objections of counsel and before the State decided whether to seek the death penalty. Marshall subsequently moved to withdraw his plea claiming that he was not competent. The trial court denied the motion despite overwhelming evidence that Marshall suffered from severe brain abnormalities and mental illness. Marshall, 144 Wn.2d at 270-73. The undisputed evidence showed that Marshall had significant organic brain damage, long-standing brain dysfunction, atrophy of the temporal and frontal lobes and that his ability to respond to stimulation and make decisions placed him in

the fourth percentile of the population, "way out in the abnormal range." The evidence also showed that Marshall scored in the first percentile in intelligence tests and that the blood flow to his brain was restricted to such a degree that it affected his ability to think, reason, and control himself. Additionally, Marshall suffered from bipolar mood disorder, paranoid schizophrenia, was psychotic, and had auditory hallucinations. Id. at 279-80.

Despite this quantum of evidence, the trial court "heavily discounted" Marshall's neurologist, psychiatrist, and neurophysiologist, and found Marshall was competent. Id. at 280. With "substantial evidence calling Marshall's competency into question" the Supreme Court easily found that the trial court had erred in not granting the motion to withdraw the plea or convene a competency hearing. Id. at 281.

There is no "substantial evidence" here, no evidence coming even remotely close to the evidence presented in Marshall. The defendant cannot show that no reasonable judge would have denied his motion to withdraw his plea.

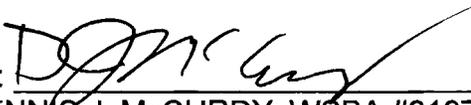
D. CONCLUSION

For the reasons cited above, this Court should affirm the trial court's order denying the defendant's motion to withdraw his guilty plea.

DATED this 26 day of September, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

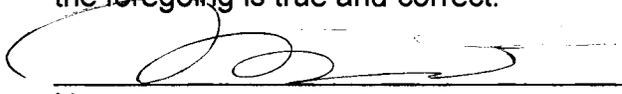
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jennifer Sweigert, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. WOODLEY, Cause No. 66673-8-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name
Done in Seattle, Washington

09-27-11
Date