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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
The Honorable R. Scott Sprouse, Plea Judge
The Honorable Letitia H. Verdin, Post-Conviction Relief Judge

Appellate Case No. 2021-000279

JONATHAN W. DUNCAN

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**BRIEF OF RESPONDENT
PURSUANT TO *WHITE V. STATE***

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PETITIONER'S STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to conduct a competency hearing prior to accepting the guilty pleas to attempted murder, domestic violence second degree, and possession of a weapon during the commission of a violent crime when Petitioner had three mental health evaluations prior to the guilty pleas and defense counsel told the plea judge that Petitioner was barely competent to enter the guilty pleas?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

- III. Whether the plea judge erred by failing to *sua sponte* conduct a competency hearing prior to accepting Duncan's guilty plea is not properly before this Court because it was neither raised nor ruled upon by the plea court.
- IV. Even if preserved, Duncan applies the wrong standard of review because the plea court never ruled on the issue of competency. Rather, the applicable standard of review is whether the plea judge had reason to believe Duncan was incompetent such that his failure to *sua sponte* conduct a competency hearing or further inquire into Duncan's competency amounted to an abuse of discretion. Because Duncan was previously found competent following three separate mental health evaluations, the plea judge did not abuse his discretion in failing to conduct a competency hearing, particularly in light of Duncan's intelligent interactions with the court, affirmation he understood the proceedings against him, and clear ability to confer with counsel.

STATEMENT OF THE CASE

Jonathan W. Duncan (Petitioner) was arrested on June 7, 2016, after violently attacking his wife, Margaret Duncan, and Justin Stazney the day prior. During its September 2016 term, the Oconee County grand jury indicted Duncan for attempted murder, second-degree domestic violence, and possession of a weapon during the commission of a violent crime. (App'x 36–41).

On October 15, 2018, Duncan appeared before the Honorable R. Scott Sprouse and pleaded guilty as indicted. (App'x 1–35). Gordon Senerius, Esquire (Counsel) represented Duncan. Senior Assistant Solicitor Bethany Blundy of the Tenth Circuit Solicitor's Office prosecuted the case. The State recommended the maximum sentence on all charges. Judge Sprouse accepted Duncan's plea and sentenced him to concurrent terms of twenty-seven years' imprisonment for attempted murder, five years for possession of a weapon during the commission of a violent crime, and three years for second-degree domestic violence.¹ (App'x 42–44). Duncan did not appeal his guilty pleas or sentences.

Duncan commenced the underlying action for post-conviction relief on February 11, 2020. (App'x 45–49). The State made its return on October 21, 2020, requesting a hearing only on Duncan's claim of ineffective assistance of counsel for

¹ Applicant was serving a one-year probationary sentence on an unrelated possession of methamphetamine charge at the time he committed the crimes which are the subject of this action. At the time of the plea, Applicant had been incarcerated for over a year. Judge Sprouse terminated probation and sentenced Applicant to time served.

failing to file an appeal and moving to dismiss the remaining allegations as barred by the statute of limitations. (App'x 50–57).

On February 1, 2021, the PCR court convened an evidentiary hearing before the Honorable Letitia H. Verdin via Cisco WebEx Meetings in accordance with the Chief Justice's administrative memorandum, *Court Operations*, dated September 14, 2020.² (App'x 58–79). Duncan was present and represented by Don Thompson, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Duncan and Counsel both testified at the hearing. By order signed on February 2, 2021, and filed February 8, 2021, Judge Verdin granted Duncan belated appellate review pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), but denied relief on all remaining grounds. (App'x 80–85). This appeal follows.

² See S.C. Sup. Ct. Memorandum dated September 14, 2020 (“Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. Consent of the parties or counsel is not required. Please use WebEx, the conferencing platform supported by the Judicial Branch.”).

STATEMENT OF FACTS

On June 5, 2016, Applicant; his wife, Margaret Duncan; and his friend, Justin Stazney, were using methamphetamine together. (App'x 7). There was sexual relationship between Justin and Margaret that Applicant was aware of. (App'x 7).

The following morning, on June 6, 2016, Applicant attacked Margaret and grabbed her by the throat, choking her until she could not breathe. (App'x 7). Applicant threw Margaret up against the wall, causing multiple bruises all over her body. (App'x 7). Justin then stepped in, trying to protect Margaret. (App'x 7–8).

Justin was sitting on the corner of his own bed when Applicant approached him from behind, slashing his neck from ear to ear. (App'x 8). Justin held his throat, knowing he had to get out of the house, and he ran into the woods, with Applicant chasing him. (App'x 8). Justin tried to make it to the neighbor's house, but Applicant caught him in the woods. (App'x 8). A struggle ensued between Applicant and Justin. (App'x 8). Justin ultimately decided to play dead, hoping Applicant would go away. (App'x 8). While Applicant was about fifty yards away, Justin attempted to call out for the neighbor. (App'x 8). Applicant ran back to Justin, stabbing him in the eye and back. (App'x 8). Justin was hospitalized for twenty days following the attack due to the extensive injuries sustained. (App'x 8–9).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Despite the mandatory language of the statute requiring a judge to order a competency examination if there is reason to believe that a person charged with a criminal offense is not fit to stand trial, ordering a competency examination is within the discretion of the trial judge and a refusal to grant an examination will not be disturbed on appeal absent a clear showing of an abuse of discretion. *State v. Locklair*, 341 S.C. 352, 364, 535 S.E.2d 420, 426 (2000).

ARGUMENT

I. Whether the plea judge erred by failing to *sua sponte* conduct a competency hearing prior to accepting Duncan's guilty plea is not properly before this Court because it was neither raised nor ruled upon by the plea court.

Duncan contends, for the first time on appeal, that the plea judge erroneously failed to conduct a competency hearing despite his failure to request one. In making that particular contention, Duncan readily acknowledges that neither the solicitor nor defense counsel requested a competency hearing. He nonetheless claims that, despite the fact that he was previously deemed competent in each of the three mental health examinations he underwent prior to entering his plea, the plea judge somehow erred as a matter of law by failing to *sua sponte* conduct a competency hearing.³ Because South Carolina's issue preservation rules requires an appellant to initiate consideration of the issue, this matter is not properly before this Court.

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) *raised by the appellant*; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912–13 (Ct. App. 2004) (emphasis added); *see also* JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying

³ Significantly, even if the plea judge had *sua sponte* discussed the possibility of holding a competency hearing, it would not be preserved. *Duncan v. Hampton Cnty. School Dist. No. 2*, 335 S.C. 535, 545, 517 S.E.2d 449, 454 (Ct. App. 1999) (finding issue unpreserved where it was raised *sua sponte* by the trial court and not by the respondent).

the four requirements that must be met in order for an issue to be properly preserved for appellate review); *cf. Sevens & Wilkinson of S.C., Inc. v. City Of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (“Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide the Court with a platform for meaningful appellate review.”)).

Here, Duncan never requested a competency hearing and nor suggested the need for one considering he was previously evaluated and found competent. As a result, the plea judge was never asked to take the action Duncan now contends he erroneously did not take.⁴

⁴ Duncan is not relieved of his preservation requirements merely because his appellate review is belated pursuant to *White*.

II. Even if preserved, Duncan applies the wrong standard of review because the plea court never ruled on the issue of competency. Rather, the applicable standard of review is whether the plea judge had reason to believe Duncan was incompetent such that his failure to *sua sponte* conduct a competency hearing or further inquire into Duncan’s competency amounted to an abuse of discretion. Because Duncan was previously found competent following three separate mental health evaluations, the plea judge did not abuse his discretion in failing to conduct a competency hearing, particularly in light of Duncan’s intelligent interactions with the court, affirmation he understood the proceedings against him, and clear ability to confer with counsel.

Assuming this Court will review the issue in the absence of a specific motion or objection, the record nevertheless supports that the plea court committed no error or abuse of discretion by accepting Duncan’s plea without conducting a competency hearing. Duncan’s convictions should be affirmed.

A defendant entering a guilty plea is held to the same competency standard as a defendant who proceeds to trial. *State v. Lambert*, 266 S.C. 574, 579, 225 S.E.2d 340, 342 (1976); *accord. Godinez v. Moran*, 509 U.S. 389 (1993). The test for determining competency is whether the defendant has “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and has “a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam). However, a court is not required to “make a competency determination in every case in which a defendant seeks to plead guilty . . .” *Godinez*, 509 U.S. at 402 n.13. As in any criminal case, “a competency determination is necessary only when a court has reason to doubt the

defendant's competence." *Id.*; see *Ford v. Wainright*, 477 U.S. 399, 425–26 (1986) (“[I]n order to have been convicted and sentenced, petitioner must have been judged competent to stand trial, or his competency must have been sufficiently clear as not to raise a serious question for the trial court.”);

Duncan contends the applicable standard of review in this case arises from the plea judge's erroneous determination of competency, citing this Court's opinion in *State v. Nance*, 320 S.C. 501, 466 S.E.2d 349 (1996).⁵ However, applying this standard of review contradicts Duncan's claim that the plea judge failed to hold a competency hearing *for the purpose* of making a competency determination. In other words, plea counsel never challenged Duncan's competency nor did he have reason to considering Duncan received three separate evaluations indicating he was competent to stand trial.

Thus, the question is not whether the plea judge erroneously determined Duncan was competent. Rather, the question is whether the plea judge had reason to believe Duncan was incompetent such that his failure to *sua sponte* conduct a competency hearing or further inquire into Duncan's competency amounted to an

⁵ In *Nance*, the trial court was required to hold a hearing to determine the defendant's competency when it was challenged by defense counsel. The trial court heard testimony from three mental health experts, each of whom had conflicting opinions regarding the defendant's competency. *Id.* at 505–06, 466 S.E.2d at 351–52. This Court upheld the trial court's determination that the defendant failed to establish he was incompetent to stand trial by a preponderance of the evidence. *Id.* at 506, 466 S.E.2d at 352; see *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001) (“[The appellate court] does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial [court's] ruling is supported by any evidence.”).

abuse of discretion. *State v. Hall*, 312 S.C. 95, 99, 439 S.E.2d 278, 281 (1994); see *State v. Locklair*, 341 S.C. 352, 363, 535 S.E.2d 420, 426 (2000) (noting that “circuit court judges have the inherent duty to order a competency examination if there is reason to believe that the person charged with the criminal offense is not fit to stand trial” pursuant to S.C. Code Ann. § 44-23-410; however, the “refusal to grant an examination will not be disturbed on appeal absent a clear showing of an abuse of discretion”); *State v. Adams*, 279 S.C. 228, 236, 306 S.E.2d 208, 213 (1983) (“South Carolina Code § 44-23-410 (1976), relating to when and how a defendant must be given a psychiatric evaluation is discretionary with the trial judge.”), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); *United States v. Gen.*, 278 F.3d 389, 399 (4th Cir. 2002) (whether the district court should have *sua sponte* ordered a competency hearing is reviewed for an abuse of discretion).

Factors to be considered in determining whether further inquiry into a defendant’s fitness to stand trial is warranted include (1) evidence of irrational behavior; (2) demeanor at trial; and (3) prior medical opinion regarding ability to stand trial. *State v. Burgess*, 356 S.C. 572, 575, 590 S.E.2d 42, 44 (Ct. App. 2003) (citing *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981)); *accord. Drope v. Missouri*, 420 U.S. 162, 180 (1975) (noting that “even one of these factors standing alone may, in some circumstances, be sufficient” but there are “no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated”).

The record reveals that Duncan was under the influence of methamphetamine at the time he committed the subject offenses. (App'x 22). Plea counsel stated he was initially held at the Greenville Health System Oconee Campus at the time of his arrest due to his drug use. (App'x 22–23). Although defense counsel noted Duncan's history of psychological issues, he stated that Duncan was receiving treatment and taking his medication since being in the detention center. (App'x 22). *Medina v. Singletary*, 59 F.3d 1095, 1107 (11th Cir. 1995) (“[N]ot every manifestation of mental illness demonstrates incompetence to stand trial; rather, the evidence must indicate a present inability to assist counsel or understand the charges.”).

Moreover, the solicitor and plea counsel stated that Duncan previously underwent psychiatric evaluation on three occasions prior to entering his guilty plea. (App'x 9, 12). He was deemed competent each time. (App'x 9, 12). Moreover, the plea judge specifically asked counsel if any findings or information contained in the three evaluation reports caused him to be concerned that Duncan is, in fact, not competent to enter the plea. (App'x 12). Counsel responded in the negative, but opined that Duncan was “barely” competent. (App'x 12). However, counsel also stated that two of the evaluations were conducted based on his observations and conversations with Duncan at the detention center. (App'x 12).

Duncan's further suggests the plea court should have conducted a competency hearing because he “seemed confused” at the plea hearing and the judge took a brief recess to allow Duncan to confer with counsel. Specifically, the record reflects that the recess was taken after Duncan disagreed with the solicitor's statement of the

events in question. (App'x 11). When the court reconvened, counsel stated he conferred with Duncan regarding his concerns, and Duncan indicated he wished to proceed with his guilty plea. (App'x 11). The guilty plea record otherwise reflects straightforward, affirmative responses by Duncan to questions from the court as to whether he was satisfied with counsel, understood the proceedings against him, and was guilty of the charges alleged.

The record does not reveal any bizarre or otherwise inappropriate behavior that would cause the court to question Duncan's competency. *See State v. Drayton*, 270 S.C. 582, 243 S.E.2d 458, 459 (1978) ("The record fails to show additional facts to warrant the trial judge in directing a further examination and hearing."); *cf. Basham v. United States*, 109 F. Supp. 3d 753, 819 (D.S.C. 2013) ("Because evidence of a defendant's demeanor at trial is relevant in determining competency, a district court may determine informally whether reasonable cause exists by observing the defendant's demeanor and assessing his statements during colloquies and other interactions with the court."); *United States v. Vamos*, 797 F.2d 1146, 1150 (2d Cir. 1986) ("Deference is owed to the district court's determinations based on observation of the defendant during the proceedings.").

Duncan further argues this Court's opinion in *Blair* supports his position that (1) the plea judge erred as a matter of law by failing to conduct a competency hearing pursuant to section 44-23-430 and (2) his failure to demand a competency hearing did not waive his right to such a hearing. Duncan's reliance on *Blair* is misplaced. As an initial matter, the trial judge in *Blair* ordered a psychiatric evaluation pursuant to

section 44-23-410 because the defendant was previously declared incompetent to stand trial by the Department of Mental Health. 275 S.C. at 531–32, 273 S.E.2d at 537. No competency hearing was held despite defense counsel placing the defendant’s sanity at issue throughout the proceeding by presenting an insanity defense. *Id.* Coupled with the defendant’s past adjudication of incompetence to stand trial and the mandatory language of section 44-23-430, this Court held the defendant’s failure to request a hearing did not constitute a waiver. *Id.* at 533, 273 S.E.2d at 538.

Here, section 44-23-430 was not implicated because the plea judge did not order Duncan to submit to a psychiatric evaluation pursuant to section 44-23-410(A) nor did Duncan have the right to a competency hearing such that he waived it. In other words, the fact that Duncan had already been found competent in three previous evaluations in addition to Duncan himself confirming he understood the proceedings against him and his clear ability to consult with counsel negated the necessity of a competency hearing. *See Hall*, 312 S.C. at 99, 439 S.E.2d at 281 (holding that the “evidence of record negates the necessity of a competency hearing” because Hall was previously found competent by the State’s psychologist and “Hall himself indicated that he understood the proceedings”); *State v. Drayton*, 270 S.C. 582, 584, 243 S.E.2d 458, 459 (1978) (holding the trial judge’s failure to *sua sponte* order examination of the defendant to determine competency did not violate section 44-23-410 nor deprive defendant of due process where the defendant was previously found competent to stand trial). Similarly, the plea judge was not required to review the reports issued

following Duncan's previous evaluations under section 44-23-420.⁶ Duncan's convictions should be affirmed.

⁶ S.C. Code Ann. § 44-23-420(A) requires the mental health examiner to make certain findings and submit the evaluation to the court "[w]ithin ten days of examination under Section 44-23-410(A)(1) or at the conclusion of the observation period under Section 44-23-410(A)(2) . . ."

CONCLUSION

For all the foregoing reasons, this Court should affirm Duncan's convictions and sentences.

Respectfully submitted,

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