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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Anderson County
Honorable Perry H. Gravely, Circuit Court Judge
Appellate Case No. 2024-000153

GERALD A. GADSDEN,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT PURSUANT TO WHITE v. STATE

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STATEMENT OF ISSUE ON APPEAL

Whether the court did not err in failing to order Appellant be evaluated for competency because Appellant's competency was restored, Appellant appeared reasonably competent at the plea hearing, and Counsel stated he had no reason to believe Appellant's incompetency had relapsed.

STATEMENT OF THE CASE

Appellant Gerald Gadsden was indicted by an Anderson County Grand Jury in September of 2016 for murder and possession of a weapon during the commission of a violent crime. He proceeded to a plea hearing on January 8, 2020, before the Honorable J. Cordell Maddox, Jr., circuit court judge. Appellant pled guilty, pursuant to Alford, to voluntary manslaughter. Appellant was sentenced to twenty years' incarceration, to be served concurrently with an unrelated life without parole sentence. Appellant's appeal was dismissed due to Counsel's failure to inform Appellant of any issues preserved for appeal. Appellant filed an application for post-conviction relief on December 10, 2020. His PCR hearing was held on November 30, 2022, before the Honorable Perry H. Gravely. Appellant was granted belated appellate review pursuant to White v. State. The remainder of Appellant's application was dismissed with prejudice. This appeal follows.

STATEMENT OF FACTS

Appellant was previously diagnosed with schizophrenia and bipolar disorder. (App'x 3). Prior to this offense, Appellant was convicted of an unrelated offense in Greenville County and was sentenced to life without parole. (App'x 14). During those proceedings, Appellant was found incompetent but was later determined to have had his competency restored. (App'x 14).

At the plea hearing, the State explained that on April 18th of 2016 officers were dispatched to H Street in Anderson County. (App'x 13). When they arrived at the scene, a victim was lying in the roadway next to a vehicle with a gunshot wound to the head. (App'x 13). Appellant ran from the scene and called his bondsman to whom he confessed. (App'x 13). Witnesses at the scene identified Appellant. (App'x 13). Appellant was arrested shortly thereafter. (App'x 13).

Counsel informed the court that Appellant's prior competency evaluations were done during his prior case and Counsel had no reason to believe Appellant had relapsed back into incompetency. (App'x 14). Appellant confirmed he understood the offense of voluntary manslaughter and had adequate time to speak with his attorney. (App'x 4-5). Appellant informed the judge he had been released from MUSC mental institution seventy-two hours before the incident. (App'x 6). Appellant informed the court that he was not in his right mind during the incident. (App'x 6). Subsequently, he pled guilty pursuant to North Carolina v. Alford. (App'x 16). The court noted that Appellant seemed to understand what was going on and that there had been several long discussions about the case. (App'x 16).

Subsequently, Appellant filed a timely notice of appeal. (App'x 18). On March 10, 2020, the Court of Appeals requested Counsel forward a guilty plea explanation to Applicant and notify Appellant of any arguable basis for appeal. (App'x 22-8). Counsel failed to adequately notify

Appellant. (App'x 34). Subsequently, Appellant filed an application for post-conviction relief. (App'x 36).

First, Appellant claimed counsel was ineffective for not requesting an evaluation to show Appellant was incompetent to enter a plea. (App'x 132). The PCR court found Counsel was not ineffective because he reasonably relied on the fact that Appellant's competency had been restored and perceived him to be competent at the time of the plea. (App'x 135).

Next, Appellant claimed that he was denied effective assistance of counsel for Counsel's inability to perfect his appeal. (App'x 137). The court relied on the fact that the State conceded[1] that Appellant did not knowingly and voluntarily waive his appeal. (App'x 138). The PCR court agreed and found Appellant was entitled to a belated appeal pursuant to White v. State.

[1] In light of this concession, the State does not contest the grant of belated appellate review.

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). The determination of whether there is "reason to believe" a defendant lacks a certain mental capacity is a question within the discretion of the trial court. State v. White, 364 S.C. 143, 611 S.E.2d 927 (Ct. App. 2005); State v. Drayton, 270 S.C. 582, 584, 243 S.E.2d 458, 459 (1978). Refusal to order further testing will not be disturbed absent an abuse of discretion. Id. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001).

ARGUMENT

The court did not err in failing to order Appellant be evaluated for competency because Appellant's competency was restored, Appellant appeared reasonably competent at the plea hearing, and Counsel stated he had no reason to believe Appellant's incompetency had relapsed.

The court acted within its discretion in not ordering Appellant be evaluated for competency. The court cannot be said to have abused its discretion because Appellant's competency was restored, the court and counsel noted it seemed as if Appellant understood what was happening, and Appellant had adequate time to speak with his attorney. Accordingly, this Court should affirm.

A criminal defendant may not be tried or plea guilty unless he is competent and does so intelligently. Godinez v. Moran, 509 U.S. 389, 396 (1993). Competence is required because "it is unfair to subject any defendant to criminal prosecution when he or she cannot understand the nature of the charges or assist in his or her own defense." 40 Am. Jur. Proof of Facts 2d 171 (Originally published in 1984). A defendant is competent if he is "capable of understanding the nature and object of the charges and proceedings against him, of comprehending his own condition in reference thereto, and of conducting in cooperation with his counsel his defense in a rational and reasonable manner." Thursby v. State, 223 A.2d 61, 66 (Me. 1966). Additionally, a defendant is not competent if he is unable to understand the proceedings against him or to assist in his own defense. Moye v. Comm'r of Correction, 142 A.3d 424, 428 (Conn. Ct. App. 2016).

Factors for the court to consider in determining whether to order a competency evaluation include: (1) evidence of irrational behavior, (2) demeanor at trial, and/or (3) any prior medical opinion on the defendant's competency to stand trial. In some instances, the presence of just one

of the factors may justify further inquiry requiring a mental evaluation. State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (Ct. App. 1981); State v. Burgess, 356 S.C. 572, 590 S.E.2d 42 (Ct. App. 2003). The determination of whether there is "reason to believe" a defendant lacks a certain mental capacity is within the discretion of the court. State v. White, 364 S.C. 143, 611 S.E.2d 927 (Ct. App. 2005). Refusal to order further examination should not be disturbed absent an abuse of discretion. Id.

In Colden our Court of Appeals found the trial court did not abuse its discretion in failing to order a competency evaluation. State v. Colden, 372 S.C. 428, 442, 641 S.E.2d 912, 920 (Ct. App. 2007). The court affirmed because defendant showed an ability to answer questions rationally, demonstrated an understanding of the proceedings, and his counsel offered nothing to demonstrate defendant was unfit for trial. Id. The Colden court noted "There was no evidence of irrational behavior before or during the trial, nor prior medical opinion concerning competency as to require an evaluation under the Burgess factors". Id.

Like this case in Dantzler, a New York appellate court found a trial court's decision to not order a competency hearing to be within the trial court's discretion. People v. Dantzler, 63 A.D.3d 137-77 (NY. Ct. App. 2009). In Dantzler, defendant had been found incompetent three months prior to his plea, but more recent evaluations, conducted while medicated, found him competent. Id. Additionally, the court noted that defendant appeared for his plea and indicated an understanding of the legal proceeding. Id.

Further, several state courts have found individuals suffering from schizophrenia and bipolar disorder to be competent. State v. Cooper, 213 SE2d 305 (1975) (overruled on other grounds by State v. Leonard, 266 SE2d 631(1980)) (finding defendant competent to stand trial even though he was diagnosed as a paranoid schizophrenic); Johnson v. State, 232 So. 3d 761,

763 (Miss. Ct. App. 2017) (finding schizophrenic defendant competent where he stated his medications and medical conditions did not impact his ability to understand the proceedings and counsel stated he believed defendant to be competent); Iverson v. State, 807 P.2d 1372, 1375 (Nev. 1991) (Noting defendant's medication for schizophrenia "helped him and that he freely, voluntarily and knowingly" pled); Sosa v. State, 201 S.W.3d 831, 832 (Tex. Ct. App. 2006) (noting "trial court's careful questioning of [defendant who suffered from schizophrenia] at the adjudication hearing did not produce any evidence of incompetence").

Here, the court did not abuse its discretion in failing to order an evaluation. Applicant was previously declared incompetent but was later found to have his competency restored. The court noted that Appellant seemed to understand what was happening and Counsel stated Appellant appeared competent. (App'x 16; 85). Given the facts explained by the State and Appellant's concurrent life without parole sentence, Appellant's decision to plea is understandable. The mere presence or history of mental illness or defect alone is insufficient to establish incompetence. Moore v. State, 287 So. 3d 189, 197 (Miss. 2020); State v. Cornell, 878 P.2d 1361 (Ariz. 1994) ("the test for whether a competency hearing is mandated is not whether a defendant was insane at some time in the past, or even whether he was free of all mental illness at the time" of trial). Appellant appeared at the plea hearing and was able to answer questions rationally, which gave the court no indication that Appellant had relapsed into incompetence. Com. v. Gerhartsreiter, 975 N.E.2d 890 (Mass. 2012) (Noting competence is the "ability to consult with one's lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings"). At the end of the plea hearing the court noted that Appellant seemed to understand what was happening during the "several long discussions" about this case. (App'x 16). Accordingly, this court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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