

FILED

MAY 28 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed May 28, 1985

449

vs.

)

JAMES MICHAEL FINLEY,

)

5-113

83-502

Defendant-Appellant.

)

Appeal from the Iowa District Court for Polk County - Rodney Ryan, Judge.

Defendant appeals his convictions of sexual abuse in the second degree and burglary in the first degree. **AFFIRMED.**

Ray Sullins, Des Moines, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Steven K. Hansen, Assistant Attorney General, for plaintiff-appellee.

Considered by Snell, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.

Defendant, James Finley, appeals his convictions of sexual abuse in the second degree and burglary in the first degree. We affirm.

The sole claim on appeal is that the trial court did not comply with the requirements of Iowa Code section 812.3 (1981) when it held the competency hearing for Finley on March 31, 1982. Our review of this claim is de novo. See State v. Pedersen, 309 N.W.2d 490, 496 (Iowa 1981).

Iowa Code section 812.3 (1981) provides:

If at any stage of a criminal proceeding it reasonably appears that the defendant is suffering from a mental disorder which prevents him or her from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, further proceedings must be suspended and a hearing had upon that question.

This statute requires a hearing on the issue of competency when the record contains information from which a reasonable person would believe a substantial question of the defendant's competency exists. State v. Kempf, 282 N.W.2d 704, 706 (Iowa 1979). The trial court conducts the hearing, and the defendant has the burden to prove incompetency by a preponderance of the evidence. Pedersen, 309 N.W.2d at 496. The defendant is presumed to be competent, id., but when incompetency is established it is presumed to continue until the contrary is shown. State v. Snethen, 245 N.W.2d 308, 310 (Iowa 1976). However, the presumption of continuing incompetency is overcome and the presumption of competency returns when a defendant is discharged as cured from a psychiatric facility in which the defendant was confined after an adjudication of incompetency. Id.

Prior to the hearing in question, Finley had been declared incompetent and had been sent to the Iowa Security Medical Facility (ISMF) at Oakdale. The staff at Oakdale later determined that competency had been restored, and Finley was released from the ISMF and returned to the Polk County Jail. Another evaluation of Finley was ordered for the purposes of the competency issue.

Finley's release from the ISMF restored the burden upon him to prove his incompetency. Snethen, 245 N.W.2d at 311. He presented no evidence of incompetence at the hearing. In fact, his counsel stated:

If it please the Court, Your Honor, we have no objection to the introduction of the formal report prepared by Shahe Zenian for this Court, and have no objection to his finding that as long as Mr. Finley maintains his medication that he is in fact competent to proceed and stand trial in this matter.

Finley did not meet his burden. There was no evidence "from which a reasonable person would believe a substantial question of the defendant's competency exists." Kempf, 282 N.W.2d at 706. The trial court did not err.

AFFIRMED.