IN THE COURT OF APPEALS OF IOWA

No. 6-266 / 95-1382

STATE OF IOWA,

Plaintiff-Appellee,

vs.

DUDIE JAMES ROSE,

Defendant-Appellant.

FILED
JUN 27 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Pottawattamie County, J.C. Irvin and Charles L. Smith III, Judges.

Defendant appeals denial of motion in arrest of judgment. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, Richard Crowl, County Attorney, and Daniel McGinn, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Habhab and Streit, JJ.

HABHAB, J.

Defendant Dudie James Rose pled guilty to first-degree theft and third-degree burglary. He filed a timely motion in arrest of judgment contending he had not been competent to knowingly, voluntarily, and intelligently plead guilty. His motion was denied and he appeals. We affirm.

Defendant was arrested after the police received a report about two men prowling around a residence and getting into a vehicle not belonging to them. Upon his arrest it was learned defendant and his companion arrived at the scene in a truck reported stolen from Omaha. Defendant was subsequently charged with first-degree theft and third-degree burglary.

On May 23, 1995, defendant entered pleas of guilty to the charges. In exchange, the State agreed to drop other theft and domestic assault charges pending against him and allowed defendant to be released prior to sentencing.

On June 26, 1995, defendant filed a motion in arrest of judgment contending his pleas were not knowingly and voluntarily entered. The motion indicated defendant had been committed to a mental health institute sometime after the entry of his pleas.

The presentence investigation report filed June 28, 1995, indicated defendant had a history of mental and emotional illness, including "numerous psychiatric hospitalizations over the past fourteen years." The report also indicated defendant had recently been admitted to a psychiatric facility because of increasing self-destructive

behavior. His psychiatrist informed the presentence investigator defendant had a "strong diagnosis of anti-social personality disorder" and a long-standing history of methamphetamine and alcohol abuse. However, the psychiatrist viewed defendant as competent to stand trial.

A sentencing hearing was held on July 24, 1995. At the hearing, defendant contended he did not remember pleading guilty and did not understand the charges or the penalties involved. He denied stealing anything. The sentencing transcript reflects the following statements and conduct by defendant:

> Because I needed medication, man. I needed psychiatric help. I didn't steal nothing. I didn't steal no damn truck. This truck was stole by somebody else. I didn't steal nothing. I had to do that to get the hell out of jail. I got out of jail and within 10 days I was in Cherokee. I didn't steal nothing. I shouldn't have pled guilty. I had to get out of jail.
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> . . . .
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> Yeah. I didn't steal nothing, man. I had to plead guilty. I was on $13,000, $14,000 bond on some other charge. It wasn't even being pursued. It was just being used to hold me in jail. I needed to get the hell out of here, man, because the jail wasn't doing me no good. Just like now, if I continue to sit in this jail, you people will -- I didn't steal nothing. I didn't steal nothing. (Whereupon, the defendant turned the counsel table over, was restrained by the Deputy Sheriff, and the hearing concluded.)

The sentencing was rescheduled for July 31, 1995. Defendant continued to deny his guilt and stated he had pled guilty merely so he could obtain drugs during his presentence release.

The district court overruled defendant's motion in arrest of judgment finding the plea was voluntarily entered for purposes of the bargain offered by the State. The

court sentenced him to a term not to exceed ten years on the theft conviction and a term not to exceed five years on the burglary conviction with the sentences to be served concurrently.

A court may not accept a plea of guilty without determining if it is voluntarily and intelligently made. Iowa R. Crim. P. 8(2)(b). In challenging his guilty plea, defendant argues his plea was not knowingly, voluntarily, and intelligently made because he was under duress from his drug addiction and was not competent to plead guilty. He asks this case be remanded for a competency determination or his guilty plea be reversed so he can plead anew.

A guilty plea proceeding is a "stage of a criminal proceeding" for purposes of section 812.3.[1] *State v. Kempf*, 282 N.W.2d 704, 707 (Iowa 1979). When a defendant's competency during trial court proceedings is challenged on appeal, our task is to examine the information before the trial court to determine if at the relevant time an unresolved question of the defendant's competency reasonably appeared. *Id.* Since constitutional safeguards are implicated, we make our own evaluation of the totality of the circumstances and review the record de novo. *Id.*

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[1] If at any stage of a criminal proceeding it reasonably appears that the defendant is suffering from a mental disorder which prevents the defendant 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. Iowa Code § 812.3 (1993).

Section 812.3 establishes a level of competency which demands a defendant appreciate the charge, understand the proceedings, and be able to assist effectively in his defense. *State v. Lyon*, 293 N.W.2d 8, 9 (Iowa 1980). The relevant considerations include the defendant's apparent irrational behavior, any other demeanor which suggests a competency problem, and any prior medical opinion of which the trial court is aware. *State v. Mann*, 512 N.W.2d 528, 531 (Iowa 1994). We also consider it significant whether a defendant or his attorney requested a competency hearing at the time of the proceeding in question. *See Jones v. State*, 479 N.W.2d 265, 270 (Iowa 1991).

We base our review on the record as it existed at the time of the proceeding for the entry of the guilty pleas. *See id.* Defendant objects to the fact that in accepting his pleas the court did not ask him if he was under the influence of any drugs or if he was suffering from any substance abuse or mental health problems. Nothing about the acceptance of defendant's pleas would have led the court to think these were relevant concerns. Defendant acknowledged he was pleading guilty in exchange for the dismissal of three other charges. He interacted with the court during the plea proceeding and asked knowledgeable and informed questions. Defendant expressed a pertinent concern about the State's request for a no-contact order. He explained, in great detail, he was related to the victim of the burglary charge and was concerned inadvertent violations of a no-contact order could occur if he and the victim were to

visit mutual relatives. He clearly understood the nature of the charges and penalties which were the subject of the plea proceeding.

A review of the sentencing transcript reveals no basis for finding defendant was not competent and did not voluntarily and intelligently enter his guilty pleas. Without a request for a competency evaluation or apparent indicia of incompetency to prompt a court to investigate the issue further, we cannot say a reasonable person would have believed a substantial question of defendant's competency existed. *See Mann*, 512 N.W.2d at 531. Defendant's motion in arrest of judgment was properly denied.

AFFIRMED.