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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

428

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

MITCHELL CLEVELAND JONES,)

Defendant-Appellant.)

Filed November 26, 1985

5-458
84-1746

Appeal from the Iowa District Court for Dallas County, Jack D. Levin and Arthur E. Gamble, Judges.

The defendant appeals from the court's finding he was competent to stand trial and denying his motion in arrest of judgment following his guilty plea. **AFFIRMED.**

Michael J. Laughlin, Assistant Appellate Defender, for the defendant-appellant.

Thomas J. Miller, Attorney General; Ann E. Brenden, Assistant Attorney General; David J. Welu and Virginia Cobb, Assistant Dallas County Attorneys, for the plaintiff-appellee.

Heard by Oxberger, C.J., Donielson, and Sackett, JJ.

OXBERGER, C.J.

The defendant appeals from the court's finding he was competent to stand trial and denying his motion in arrest of judgment following his guilty plea. We affirm.

The defendant was initially charged with two counts of kidnapping in the second degree and one count of robbery in the first degree. A pretrial hearing was held on the defendant's mental competency to stand trial.

The defendant later entered pleas of guilty, pursuant to plea negotiations, to one count of kidnapping in the third degree and one count of theft in the second degree. Prior to sentencing the defendant filed a motion in arrest of judgment. The trial court overruled the defendant's motion.

Our review is at law and we are limited to correcting errors of law or reversing if there is no substantial evidence to support the fact findings of the court. Iowa R. App. P. 4.

In the defendant's first assertion of error he has not presented a claim of due process violation, and we are limited to determining if there is substantial evidence to support the court's finding of competency. State v. Aswegan, 331 N.W.2d 93, 95 (Iowa 1983). It is possible for a defendant to be mentally ill, and yet be competent to stand trial. Hickey v. District Court of Kossuth County, 174 N.W.2d 406, 410 (Iowa 1970). The court's duty is to decide if the defendant lacks the capacity to understand the nature and object of the proceedings against him and assist in the preparation of his defense. Iowa Code § 812.3 (1985).

The defendant's expert determined that the defendant was not competent to stand trial, while the State's expert concluded he was competent. Both agreed he suffered from chronic schizophrenia and that the condition existed for four or five years. The State's expert, Dr. Fredrickson, initially observed tangential thinking by the defendant, but found it significant he could give a physical,

family, and mental history upon admission to the mental health facility, and gave an entire account of the crime. He noted a marked improvement after the defendant's stay at Oakdale, and with the administration of an anti-psychotic medicine, Stelazine. The defendant's expert, Dr. Garfield, noted medication "may curb the more florid aspects of his psychotic condition to the point where he would become competent to stand trial." When the defendant was discharged from Oakdale he was experiencing only "residual" symptoms.

Both doctors were well qualified and much of the court's decision necessarily was based on a determination of the credibility of witnesses. This is the type of decision best left to the trial court which observes the witnesses. We find substantial evidence to support the court's finding that the defendant was competent.

The defendant further claims his motion in arrest of judgment should have been granted because he had not been taking his medication when he entered the guilty plea, but rather was giving it to other inmates. He also says the plea was not voluntarily entered and there was no factual basis for the plea.

Once a determination is made that an individual is competent to stand trial, the presumption of competency continues until there is evidence to the contrary. State v. Aswegan, at 96. Although defendant claims he gave his medicine to other people, there are no other facts to support an indication he was incompetent when the plea was entered. There was no abnormal behavior observed, and he was able to respond coherently to the questions asked, all factors to consider in determining competency. Id. The only other evidence of his alleged incompetency is his own claim he did not understand what was happening, and a quote taken from the hearing on the motion in arrest of judgment which shows rambling and inconsistent statements. These statements were made by the defendant at a time when it was in his own best interest to show

he was incompetent, and occurred a month after the plea was entered. We agree he was competent at the time of the plea.

Defendant's claim that his plea was not voluntarily entered is based on his assertion he was threatened by inmates prior to entering the plea. The defendant was specifically asked at the time the plea was given whether he had been threatened, and he denied he had been. In addition, there is no evidence connecting the alleged threats by the inmates to his giving a plea of guilty.

Finally, he asserts there was no factual basis for the plea to the kidnapping charge because he was asked whether he had the intent to use the victim to get away, and he responded, "No. I had the intent of using that person to help me, both him and I out of the situation that we were in."

Independent of this statement, the defendant made other statements indicating he agreed his intent was to use the victim as a hostage or shield:

> MR. WELU: Your Honor, it is the State's position that the defendant, as well as his accomplices, did take one Curtis G. Clark from his job at the I-80 and Ashworth Standard Station and in the process of doing so had him in their possession to use him as a shield in order to escape from the State of Iowa.
> THE COURT: Okay.
> MR. JONES: I understand that.

There is ample evidence, provided by defendant in his plea, that he aided and abetted in the crime, and that his cohorts had the necessary intent. In such a case, he is guilty along with the principal. Iowa Code § 703.1 (1985).

We find the court properly denied the motion in arrest of judgment and affirm the decision.

AFFIRMED.