

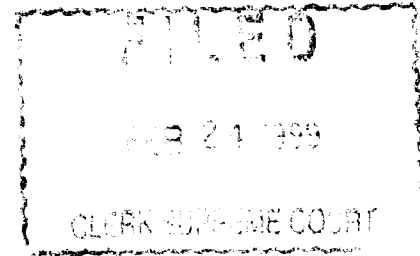
IN THE COURT OF APPEALS OF IOWA

No. 8-719 / 98-285
Filed February 24, 1999

STATE OF IOWA,
Appellee,

vs.

JAMES EDWARD JOHNSON,
Appellant.



Appeal from the Iowa District Court for Johnson County, Patrick R. Grady
(competency hearing), L. Vern Robinson (guilty plea), Judges.

James Johnson appeals his conviction for second-degree sexual abuse,
claiming he was not competent to stand trial or enter a guilty plea. **AFFIRMED.**

Janice B. Binder of the Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney
General, J. Patrick White, County Attorney, and Anne Lahey, Assistant County
Attorney, for appellee.

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

VOGEL, J.

James Johnson appeals his conviction for second degree sexual abuse, claiming he was not competent to stand trial or enter a guilty plea. We affirm.

Background facts. On May 21, 1997, Johnson was arrested and interviewed by police about an incident involving a minor at the Coralville Recreation Center. He was subsequently charged with first degree kidnapping and second degree sexual abuse.

Johnson moved to suppress any statements he made during the police interview. The district court granted his motion, finding Johnson was incapable of understanding his *Miranda* rights as explained to him by the officers. Johnson then moved for a competency hearing based on his mental retardation and history of schizophrenia. After a hearing, the district court found Johnson was competent to stand trial. Johnson pled guilty to the sexual abuse charge and now appeals.

I. Competency to stand trial. Johnson claims that the district court erred in finding him competent to stand trial.

A defendant may not be tried or convicted while he is incompetent to stand trial or assist in his own defense. *See State v. Edwards*, 507 N.W.2d 393, 395 (Iowa 1993). “To deprive him of this right is to deprive him of due process and a fair trial.” *Id.* Due to the constitutional concerns, we review the record de novo where no competency hearing was held below. *See State v. Rieflin*, 558 N.W.2d 149, 151-52 (Iowa 1996). However, once a competency determination is made by the district

court, we review for errors of law. Iowa R. App. P. 4; *Id.* at 151. Our inquiry is limited to whether there is support in the record for the competency finding. Iowa R. App. P. 14(f)(3); *Rieflin*, 558 N.W.2d at 151.

Iowa Code section 812.3 (1997) provides:

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.

There is a presumption that a defendant is competent to stand trial. *See State v. Mann*, 512 N.W.2d 528, 531 (Iowa 1994) (citations omitted). It is the defendant's burden to prove otherwise. *Id.* “[S]ubnormal intelligence is merely a factor to be considered in determining whether or not an accused is competent to stand trial.” *State v. Stoddard*, 180 N.W.2d 448, 449 (Iowa 1970).

Johnson contends that substantial evidence does not support that he was capable of appreciating the charge against him, understanding the proceedings, or assisting in his own defense. Although certain concepts had to be explained to Johnson, the evidence indicated that he had an appreciation of the serious nature of the charge and a basic understanding of the court proceedings. The evidence indicated that Johnson knew that he was charged with an offense arising out of an alleged sex act with a child and that he could be incarcerated for a long time if convicted. He also understood that his guilt or innocence would be decided at trial by a jury and that the judge would pronounce sentence. Johnson was also able to

appropriately respond to questions about the incident that lead to the arrest. Although the experts disputed whether Johnson's short attention span would impact his ability to assist in his defense, the district court found that Johnson's demeanor and behavior during the two-and-a-half-day competency hearing indicated that any attention deficit would not substantially impair his ability to participate in his defense.

We conclude that substantial evidence supports that Johnson was competent to stand trial in accordance with Iowa Code section 812.3. We therefore affirm the district court's determination of competency.

II. Knowing and voluntary plea. Johnson also asserts that his plea was not entered into voluntarily and intelligently because the sentencing court did not explain the consequences of the plea in a manner which he could comprehend. Johnson's claim involves constitutional safeguards; we therefore review de novo. *See State v. Sayre*, 566 N.W.2d 193, 195 (Iowa 1997); *State v. Oldham*, 515 N.W.2d 44, 46 (Iowa 1994).

Fundamental due process requires a guilty plea be voluntary and intelligent. *Sayre*, 566 N.W.2d at 195 (citation omitted). Iowa Rule of Criminal Procedure 8(2)(b) specifies the colloquy in which a court must engage to ensure that a plea is knowingly and voluntarily made. *Id.*

Before accepting Johnson's guilty plea, the court engaged Johnson in the following dialogue:

THE COURT: The State is accusing you of Second Degree Sexual Abuse. Anybody who commits sexual abuse with a child under the age

of 12 years is guilty of Second Degree Sexual Abuse. That's a crime that has a maximum punishment of a prison term not to exceed 25 years and, if you're convicted of that crime, you will spend in excess of 21 years in prison before you would be eligible for parole. Do you understand that?

JOHNSON: Yes.

THE COURT: Do you want to plead guilty to this crime?

JOHNSON: Yes.

THE COURT: Have you had enough time to talk about this case with your attorneys?

JOHNSON: Yes.

The court then proceeded with a plea colloquy using mostly simplified language to many, but not all of the rights, Johnson would be giving up if he were to plead guilty. The court stated it was familiar with the file and knew there had been a competency hearing. The court then asked Johnson's counsel if they had discussed his guilty plea. Counsel replied:

I've been over with [the defendant] just exactly what you went over with him. Some of the testimony was that there are things like rights that he has difficulty with, but I'm -- I'm at least satisfied that he knows when he pleads guilty, that there won't be a trial and a finding of guilty or not guilty will be made by you based on him admitting to facts and I know that he can admit to the facts that constitute this crime.

The court then asked Johnson if he committed the specific acts accused of and Johnson responded, "Yeah" to each inquiry. The court also asked, "James Johnson, I have to ask you. Is there any reason that you know of why I shouldn't send you to prison right now?" Johnson conferred with his counsel and answered, "No."

We are left to assess whether a man, having been found competent to stand trial, was given an adequate explanation of the rights he was giving up and the possible sentence facing him such that we can find he entered his plea knowingly and voluntarily.¹ *Cf. State v. Walton*, 228 N.W.2d 21, 24 (Iowa 1975) (examining all the circumstances before the trial court to determine if at the time the pleas were accepted there existed an unresolved reasonable doubt as to defendant's competence to plead guilty).

We find that considering these factors: 1) the previous competency finding, 2) the assessment of the defendant at the plea proceedings as found by the trial court,

¹ Rule 8(2)(b) provides:

The court may refuse to accept a plea of guilty, and shall not accept a plea of guilty without first determining that the plea is made voluntarily and intelligently and has a factual basis. Before accepting a plea of guilty, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

- 1) The nature of the charge to which the plea is offered.
- 2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.
- 3) That the defendant has the right to be tried by a jury, and at trial has the right to assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right not to be compelled to incriminate oneself, and the right to present witnesses in the defendant's own behalf and to have compulsory process in securing their attendance.
- 4) That if the defendant pleads guilty there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial.

3) the adequacy of the content of the plea proceedings and 4) the manner of inquiry by the sentencing court, Johnson knowingly and voluntarily entered his plea.

Having considered all issues properly before us on appeal, we hereby affirm Johnson's conviction and sentence.

AFFIRMED.