FILED
JUN 28 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

279

STATE OF IOWA,)

Appellee,) Filed June 28, 1979

vs.)

TERRY LEE HAYES,) 136
62413

Appellant.)

Appeal from Black Hawk District Court - Hon. Peter Van Metre, Judge.

Defendant appeals conviction, entered on his guilty plea, of violation of section 709.2, The Code 1977, alleging trial court erred in failing to order sanity trial prior to acceptance of plea. AFFIRMED.

Paul T. Shinkle of Ackerman & Shinkle, Cedar Falls, Iowa, for appellant.

Thomas J. Miller, Attorney General of Iowa; Ann Fitzgibbons, Assistant Attorney General; and David Correll, Black Hawk County Attorney; for appellee.

Heard by Oxberger, C.J., and Donielson, Snell and Johnson, JJ. Carter, J., takes no part.

Defendant-appellant, Terry Lee Hayes, appeals from trial court judgment and sentence entered on his plea of guilty to the crime of larceny in excess of $20 in violation of section 709.2, The Code 1977, alleging trial court erred in failing to hold a sanity trial when evidence of some mental impairment was known to the court at the time of acceptance of his guilty plea. We affirm.

At his arraignment on December 30, 1977, defendant entered a plea of not guilty to a charge of larceny in excess of $20. On February 3, 1978, his plea of guilty was accepted by trial court after adequate compliance with Brainard v. State, 222 N.W.2d 711 (Iowa 1974), and State v. Sisco, 169 N.W.2d 542 (Iowa 1969). At the change of plea proceedings, the court was advised of defendant's psychiatric record and, at defense counsel's request, agreed to consider further mental evaluation prior to sentencing. A report from Broadlawns Polk County Hospital, Des Moines, Iowa, was filed with the court on July 12, 1978. The report stated that, while defendant had been erratic in appearing for testing, the differential diagnosis seems to include antisocial personality, alcoholic deterioration and psychosis with drug intoxication. A mental status exam showed defendant to be alert, cooperative and oriented to time, place and person; psychological testing raised the possibility of organic brain syndrome explainable by head trauma or alcohol and drug abuse or both. On August 1, 1978, defendant was sentenced to incarceration not to exceed 5 years with direction for treatment at the Iowa Security Medical Facility at Oakdale as space became available. The present appeal was taken from those orders and sentence.

I. In light of defendant's failure to file a motion in arrest of judgment pursuant to section 788.1, The Code 1977,[1] we initially must determine whether a direct appeal is the proper procedural posture for review of defendant's allegations. See State v. Reaves, 254 N.W.2d 488, 493 (Iowa 1977). It is our opinion that the Reaves principle applies to cases in which the adequacy (emphasis added) of the guilty plea proceedings is challenged. Because the instant case involves a question of defendant's competency (emphasis added) to enter a guilty plea and challenges the court's failure to act pursuant to section 783.1, The Code 1977, we conclude direct appeal is proper.

II. Defendant asserts that, due to evidence of his long history of mental disorder, trial court erred in accepting his guilty plea without first having a trial to determine his sanity.

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[1] Iowa R. Crim. P. 23(3)(a).

Section 783.1, The Code 1977, requires that "[i]f a defendant appears in any stage of the trial of a criminal prosecution and a reasonable doubt arises as to his [or her] sanity, further proceedings must be suspended and a trial [by a jury] had upon that question." The test for sanity is whether defendant has the mental capacity to appreciate the charge against him, understand the proceedings and aid in the conduct of his defense. State v. Evans, 259 N.W.2d 789, 792 (Iowa 1977); State v. Stoddard, 180 N.W.2d 448, 449 (Iowa 1970); Hickey v. District Court of Kossuth County, 174 N.W.2d 406, 409 (Iowa 1970). Reasonable doubt is determined by a consideration of all the facts and circumstances and which are themselves sufficient to warrant a person of reasonble caution to believe the accused can or cannot appreciate the charge against him, understand the proceedings and assist in the conduct of his defense. State v. Stoddard, 180 N.W.2d at 449. Past commitments to and release from a mental hospital, as well as expert opinions, are merely factors to be considered in determining an accused's competency. Id.

The initial decision as to whether circumstances have arisen which indicate the existence of a reasonable doubt as to an accused's sanity is made by trial court in the exercise of sound judicial discretion. State v. Evans, 259 N.W.2d at 792; State v. Milford, 186 N.W.2d 590, 593 (Iowa 1971). This exercise of discretion "must be guided by the law so as to do substantial equity and justice." State v. Stoddard, 180 N.W.2d at 449; Hickey v. District Court of Kossuth County, 174 N.W.2d at 409. Defendant bears the burden of establishing trial court's abuse by a preponderance of the evidence. State v. Stoddard, 180 N.W.2d at 449-50. On review we may examine the entire record. State v. Evans, 259 N.W.2d at 792.

The record in this case reveals that any mental shortcomings of defendant were slight and the probable result of chemical or alcohol dependency. There is no indication that he did not possess the requisites of sanity; the record establishes that defendant had the ability to appreciate the charge against him, understand the proceedings and aid counsel in his defense. We therefore find that the record raises no reasonable doubt as to defendant's sanity and that trial court did not abuse its discretion by accepting his guilty plea without a trial on that issue.

Judgment of trial court is affirmed.

AFFIRMED.