

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

JOE LINCEN MESA

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 970 EDA 2016

Appeal from the Judgment of Sentence Dated March 15, 2016
In the Court of Common Pleas of Carbon County
Criminal Division at No(s): CP-13-CR-0000706-2009

BEFORE: OTT, J., SOLANO, J., and JENKINS, J.

MEMORANDUM BY SOLANO, J.:

FILED DECEMBER 05, 2016

Appellant, Joe Lincen Mesa, appeals from the judgment of sentence of 18 to 36 months' incarceration, imposed by the trial court after a jury convicted Appellant of two counts of arson.¹ On appeal, Appellant challenges the trial court's determination that he was competent to be sentenced. We affirm.

The trial court recited the protracted background of this case as follows:

On August 8, 2011, [Appellant] was convicted of two counts of arson with respect to the incendiary destruction of his home and automobile on February 27, 2009. That [Appellant] had committed these offenses was evident from the evidence presented at trial by the Commonwealth[.] . . .

¹ 18 Pa.C.S. § 3301(a)(1)(i)(arson endangering persons) and (c)(3)(arson endangering property with intent to collect insurance).

[Appellant] was originally scheduled for sentencing on October 17, 2011, and a presentence investigation report and mental health evaluation were ordered. Sentencing was continued several times until March 27, 2012, at which time [Appellant] presented Dr. Raja S. Abbas, a board-certified psychiatrist, who testified that [Appellant] appeared to have a cognitive disorder which rendered him incompetent to be sentenced, but that a detailed neuropsychological evaluation was necessary "to determine the extent or presence of any cognitive issues." In consequence, [Appellant's] sentencing was continued multiple times, until July 29, 2014.

On March 24, 2014, David S. Glosser testified to the results of a neuropsychological assessment he performed on June 27, 2012. Dr. Glosser is a neuropsychologist; he is neither a medical doctor nor a psychiatrist. Dr. Glosser testified that [Appellant] exhibited significant signs of cognitive dysfunction and that as a result of this dysfunction and the medications he was taking, his judgment was compromised. Dr. Glosser also testified that due to [Appellant's] poor mastery of the English language, [Appellant's] case was a difficult one to evaluate. Unfortunately, due to the delay between when Dr. Glosser's examination was performed and his testimony presented, at the time Dr. Glosser testified, he did not know the current state of [Appellant's] cognitive functions.

To update his assessment, Dr. Glosser re-examined [Appellant] on April 14, 2014. Following this re-examination, Dr. Glosser testified on July 29, 2014, that [Appellant] was able to understand the nature of the charges against him, that he had been convicted, that he needed to be sentenced and what sentencing is, and that he was at risk of being punished, which he dreaded. Dr. Glosser further noted that [Appellant] had the capacity and ability to participate in sentencing and to provide information to the court, but that he had a tendency to wander in his responses.

With the results of the neuropsychological assessment which Dr. Abbas had earlier recommended now available, Dr. Abbas performed an updated psychiatric evaluation on July 18, 2015. On September 18, 2015, Dr. Abbas testified that [Appellant] was not competent to be sentenced. In explaining this conclusion, Dr. Abbas stated that [Appellant] was paranoid, that he believed the proceedings were a sham and everyone was an imposter, and that the facts upon which he was prosecuted

were made up. At this hearing, at the request of the court, [Appellant] testified for the first time, and the court had the opportunity to hear [Appellant's] responses to questions and to observe [Appellant's] demeanor. [Appellant] appeared to understand the questions asked and was responsive, however, at times, as predicted by Dr. Glosser, [Appellant] wandered in his responses. By order dated December 29, 2015, we found [Appellant] to be competent to be sentenced.

[Appellant] was scheduled for sentencing on February 23, 2016. At that time, both [Appellant] and his counsel appeared in court, and [Appellant] was questioned and given an opportunity to present evidence to the court for sentencing purposes. The court also had available to it the presentence investigation report previously prepared by the Carbon County Adult Probation Office and dated March 22, 2012. Unfortunately, before [Appellant's] sentence was pronounced, [Appellant] collapsed and sentencing was deferred to March 15, 2016. On March 15, 2016, [Appellant] was sentenced to a period of imprisonment of no less than eighteen months nor more than three years in a state correctional institution, to be followed by two years state probation, on Count 1, . . . and a concurrent sentence of one to two years on Count 2.

Trial Ct. Op., 5/17/16, at 2-6 (footnotes and citations omitted).

Appellant filed this timely appeal, and presents a single issue for our review:

Whether the Trial Court erred in finding [Appellant] competent to proceed in this matter when the undisputed testimony of two mental health professionals established that [Appellant] suffered from several mental health conditions that cause him to lack a rational understanding of these proceedings and to lack the ability to consult with his lawyer with a reasonable degree of rational understanding?

Appellant's Brief at 5.

Appellant argues that he was incompetent to proceed with sentencing because, he "possesses a factual understanding of the legal proceedings but

lacks a rational understanding of the proceedings because of various mental health issues, most notably a delusion that the proceedings were a conspiracy against him.” Appellant’s Brief at 12. The Commonwealth responds that, to the contrary, Appellant failed to overcome the presumption of competency by a preponderance of credible evidence. Commonwealth’s Brief at 5.

In reviewing Appellant’s claim, we are mindful of the following:

A defendant is presumed competent and it is his burden to show otherwise, the determination of which is within the sound discretion of the trial court. **Commonwealth v. Sanchez**, 589 Pa. 43, 64, 907 A.2d 477, 490 (2006) (citing **Commonwealth v. Sam**, 535 Pa. 350, 357, 635 A.2d 603, 606 (1993); **Commonwealth v. Chopak**, 532 Pa. 227, 235, 615 A.2d 696, 700 (1992)). When a competency hearing takes place, incompetency may be established by a preponderance of the evidence. 50 P.S. § 7402(d). The sensitive nature of competency determinations requires the appellate courts to afford great deference to the conclusions of the trial court, which has had the opportunity to observe the defendant personally. **Id.** (citing **Chopak, supra**). When the record supports the trial court’s determination, we will not disturb it. **Id.** at 65, 907 A.2d at 490.

Commonwealth v. Stevenson, 64 A.3d 715, 720 (Pa. Super. 2013), *appeal denied*, 80 A.3d 777 (Pa. 2013) (table).

Regarding the role of the trial court, our Supreme Court has stated:

Where there is reason to doubt a defendant’s competency, the trial court is required to conduct a competency hearing. **Commonwealth v. Uderra**, 580 Pa. 492, 862 A.2d 74, 88 (2004). Competency is measured according to whether the defendant has sufficient ability at the pertinent time to consult with counsel with a reasonable degree of rational understanding, and to have a rational as well as a factual understanding of the

proceedings. *Id.* (citing ***Commonwealth v. Appel***, 547 Pa. 171, 689 A.2d 891, 899 (1997), and 50 P.S. § 7402).

Commonwealth v. Davido, 106 A.3d 611, 639 (Pa. 2014) (per curiam).

Consonant of the foregoing, we have reviewed the record and discern no abuse of discretion by the trial court. Moreover, the Honorable Roger N. Nanovic, sitting as the trial court, has authored an opinion which comprehensively and ably addresses Appellant's appellate argument, and ultimately concludes:

Expert opinions are intended to assist in understanding the evidence or determining a fact in issue. Pa.R.E. 702(b). They are not to be followed blindly without examining the facts on which they are based, nor are the conclusions reached to be accepted notwithstanding what the credible evidence clearly proves to be true. This is particularly true when the subject matter of the opinion concerns matters which we indirectly deal with on a daily basis and in our interactions with others in evaluating the validity of what we are told, and in evaluating their understanding of what we say and do.

[Appellant] claims he was incompetent to be sentenced: that he did not have the capacity to understand what sentencing is, or to participate and assist his counsel at sentencing. This is contrary to our observations and evaluation of [Appellant's] testimony over numerous hearings and [Appellant's] actual participation at sentencing. This is contrary to specific testimony given by Dr. Glosser concerning [Appellant's] capacity to be sentenced. This is contrary to [Appellant's] acute awareness of the effect sentencing could have on him and his dread of that sentence. Simply stated, [Appellant] did not overcome the presumption of competency by a preponderance of the evidence.

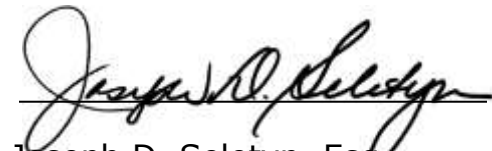
Trial Ct. Op., 5/17/16, at 17-18.

Prior to reaching his conclusion, Judge Nanovic engaged in a thorough analysis, citing prevailing legal authority and the notes of testimony, in

support of his determination that Appellant was competent to be sentenced. Because the record substantiates the trial court's conclusions, we will not disturb the trial court's exercise of its discretion. ***See Stevenson***, 64 A.3d at 720. We adopt and incorporate the trial court's May 17, 2016 opinion, in its entirety, in disposing of this appeal. The parties shall attach a copy of that opinion to this one in the event of future proceedings.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/5/2016

