

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGELO FERGUSEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64665

FILED

APR 15 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of burglary, sexual assault, robbery, and first-degree kidnapping. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

First, appellant Angelo Ferguson argues that he was not competent during the substantive proceedings in his case and that the district court's indifference to his incompetence constituted a due process violation. He asserts that the error was structural in nature and is not subject to harmless error analysis.

"The conviction of an incompetent person is a violation of due process and a defendant must be competent at all stages of prosecution, including sentencing." *United States v. Rickert*, 685 F.3d 760, 765 (8th Cir. 2012) (internal citations omitted), *cert. denied*, ___ U.S. ___, 133 S. Ct. 1609 (2013). A person is competent if he has a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960) (internal quotation marks omitted); see NRS 178.400 (setting forth

Nevada's competency standard); *Calvin v. State*, 122 Nev. 1178, 1182, 147 P.3d 1097, 1100 (2006) (holding that Nevada's competency standard conforms to the standard announced in *Dusky*). "A district court's determination of competency after a competency evaluation is a question of fact that is entitled to deference on review. Such a determination will not be overturned if it is supported by substantial evidence." *Calvin*, 122 Nev. at 1182, 147 P.3d at 1099 (footnote omitted).

The record reveals that the Nevada Supreme Court reversed Ferguson's prior conviction after concluding that the district court abused its discretion by denying his request for a competency hearing. *Ferguson v. State*, 124 Nev. 795, 805, 192 P.3d 712, 720 (2008). On remand, Ferguson was sent to Lake's Crossing for evaluation. Initially, Ferguson's competency issues were handled by District Judge Kathleen Delany. She conducted competency hearings, determined that Ferguson was incompetent, and ordered Ferguson back to Lake's Crossing.

Ferguson's competency issues were later handled by District Judge Linda Bell. After Lake's Crossing evaluated Ferguson and found that he was competent, Judge Bell held a competency hearing so that Ferguson could challenge the doctors' findings.¹ During the hearing, Doctor Farmer testified that there was nothing from a mental illness standpoint that would interfere with Ferguson's competency, Ferguson understood the nature of the court proceedings, Ferguson's unwillingness to assist counsel was the result of his antisocial tendencies, and some of

¹Ferguson did not provide the doctors' written competency evaluations for our review, but it is plain from our review of the record that Judge Bell considered this evidence in making her competency determination.

Ferguson's mental illness symptoms were malingered. Doctor Henson testified that Ferguson had not exhibited any symptoms of psychosis that would present a barrier to Ferguson's competency, when Ferguson was on medication he showed no signs of psychosis, Ferguson suffered from antisocial personality disorder, and Ferguson had the ability to aid and assist counsel but did not have the ability to offer explanations that counsel can use because the facts supporting his explanations did not exist. Judge Bell subsequently determined that Ferguson was competent. We conclude that Judge Bell's competency determination is supported by substantial evidence and decline to overturn it on appeal.


Second, Ferguson argues that the district court erred by failing to stay the sentencing proceedings and conduct a hearing on his competency. He asserts that the error was structural in nature and is not subject to harmless error analysis.

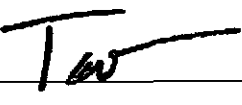
"Any time after the arrest of a defendant . . . if *doubt* arises as to the competence of the defendant, the court shall suspend the proceedings . . . until the question of competence is determined." NRS 178.405(1) (emphasis added). "The doubt mentioned in the NRS 178.405 means doubt in the mind of the trial court, rather than counsel or others. A determination whether doubt exists rests largely within the discretion of the trial judge." *Williams v. State*, 85 Nev. 169, 174, 451 P.2d 848, 852 (1969) (internal citation omitted).

Following the trial, defense counsel filed a motion asking the district court to find Ferguson incompetent and to stay the sentencing proceedings. In the motion, defense counsel argued that she did not believe that Ferguson was competent before, during, or after the trial. The State opposed the motion, observing that defense counsel did not

allege that Ferguson's condition had changed since the district court's pretrial competency ruling, but rather that counsel did not believe that Ferguson had ever been competent. At the time set for a hearing on the motion, defense counsel submitted the matter on the motion. The district court stated that it had reviewed the motion, observed that the motion did not appear to provide anything that had not already been considered by the court, and denied the motion. We conclude that Ferguson has not demonstrated that the district court abused its discretion in this regard.

Having determined that Ferguson is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Linda Marie Bell, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk