

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-001151-MR

RICHARD KEVIN SCOTT

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NOS. 02-CR-00005 AND 02-CR-00092

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: HOWARD, JUDGE; GUIDUGLI AND KNOPF, SENIOR JUDGES.¹

KNOPF, SENIOR JUDGE: Richard Kevin Scott pled guilty to one count each of murder, first-degree burglary, first-degree wanton endangerment, fourth-degree assault, and custodial interference. He received a sentence of life imprisonment. On appeal, Scott argues that the trial court erred in finding him competent to enter a guilty plea. For the reasons stated below, we affirm.

¹ Senior Judges Daniel T. Guidugli and William L. Knopf sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

The facts are not in dispute and are as follows. On December 26, 2001, Scott shot and killed his ex-wife's husband, Joel Gifford, after Gifford attempted to stop him from forcibly taking Scott's minor child from Gifford's residence without permission. A Graves County Grand Jury returned a four-count indictment against Scott on January 28, 2002. The indictment charged Scott with one count of murder for the shooting of Joel Gifford, one count of custodial interference, one count of first-degree burglary and one count of fourth-degree assault for the beating of his ex-wife, Terri Gifford. The grand jury, on February 25, 2002, returned a second indictment, charging Scott with one count of first-degree wanton endangerment. The issue of Scott's competency to stand trial was apparent early in the case. The trial court held a competency hearing on May 5, 2003, at which Dr. Steven Simon of the Kentucky Correctional Psychiatric Center (KCPC) testified. Dr. Simon testified that Scott had been at KCPC a year prior to the hearing, and upon his discharge, Scott was competent to stand trial. However, due to the passage of time since his last evaluation of Scott, Dr. Simon could not testify at the hearing as to Scott's competency at that moment. The trial court ordered an out-patient evaluation of Scott to determine his current competency.

Scott was evaluated at the Pennyroyal Center by Dr. Robert Sivley, who on August 8, 2003, found that Scott was not competent to assist in his own defense. After Dr. Sivley issued his report, the trial court ordered Scott back to KCPC for more in-patient treatment. Scott was treated for another two months and was found to be competent by an evaluation done by Dr. Simon on November 18, 2003.

On January 23, 2004, Scott entered a plea of “guilty but mentally ill” to all of the charges. The trial conducted a lengthy plea colloquy questioning both Scott and his counsel. The issue of competency was raised again during the colloquy. The trial court noted that the new evaluation by Dr. Simon had been completed and Scott was determined to be competent. Defense counsel advised the trial court that Scott was able to participate in his own defense. The trial court found Scott to be competent and also found that the plea was knowingly, voluntarily, and freely entered. This appeal followed.²

Scott argues that the trial court erred by finding him competent to enter a guilty plea. The general rule is that “there is no higher mental standard required to enter a guilty plea than there is to stand trial.” *Conley v. Commonwealth*, 569 S.W.2d 682, 684 (Ky. App. 1978). A defendant must have a “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and have both a rational and factual understanding of the proceedings against him. *Thompson v. Commonwealth*, 147 S.W.3d 22, 32 (Ky. 2004) (citation omitted). The determination of competency is made under the preponderance of the evidence standard. *Id.* The trial court's determination of competency will not be disturbed on appeal unless it is clearly erroneous. *Id.* at 33. A determination is clearly erroneous if it is not supported by substantial evidence. *Id.*

Further, appellate courts in Kentucky have recognized that “the trial court is in the best

² On May 16, 2007, a show cause order was issued by this Court regarding whether Scott's appeal was timely filed. Subsequent to that order, the panel assigned to this appeal recused themselves after confusion regarding a review of the trial record by counsel that resulted in *ex parte* communications. After reviewing the record, we find that the response to the show cause order was sufficient. The appeal was timely made.

position to determine if there was any reluctance, misunderstanding, involuntariness, or incompetence to plead guilty.” *Bronk v. Commonwealth*, 58 S.W.3d 482, 487 (Ky. 2001) (citation omitted). Here, the trial court's determination that Scott was competent to plead guilty was not clearly erroneous.

For nearly two years, the trial court evaluated Scott's competency during numerous hearings and evaluations. In this period, Scott was under medical supervision and received medication. At the plea colloquy, the trial court questioned Scott and his counsel at length regarding his competency. The trial court's record reflects that Scott appeared composed and acted rationally in responding to the trial court's questions that he understood what rights he was waiving and understood the charges against him. Scott stated that his judgment was not impaired by his medication. In addition to his plea colloquy, Scott has been afforded numerous attempts to demonstrate his incompetency. Therefore, based upon the totality of the circumstances, we conclude that the trial court's findings that Scott was competent to enter a guilty plea was not clearly erroneous.

The judgment of the Graves Circuit Court is affirmed.

ALL CONCUR.

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