

ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-13-887

MICHAEL LEE RING

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered MARCH 12, 2014

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NOS. CR-11-1107, CR-12-896]

HONORABLE BRENT DAVIS,
JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

The issue in this case is whether the trial court erred in not ordering a mental evaluation pursuant to Arkansas Code Annotated section 5-2-305. We affirm.

On February 6, 2012, appellant Michael Ring entered guilty pleas to the offenses of aggravated assault and terroristic threatening. He was placed on five years' probation, with terms and conditions including that he live a law-abiding life, obey a no-contact order for certain members of his family, and undergo a psychiatric assessment and follow the recommendations stemming from it.¹

On March 23, 2012, the State filed a petition to revoke Ring's probation, alleging that Ring had violated the no-contact order; Ring entered a guilty plea to violating the terms and

¹At the time of entry of the order of probation in this case, the State nolle prossed two counts of aggravated assault, one count of third-degree assault, and one count of drunken, insane, disorderly person.

conditions of his probation and was placed on five years' probation. Conditions of his probation included that he live a law-abiding life, pay an electronic-monitoring fee, continue the no-contact order, and undergo psychiatric counseling as deemed appropriate by the probation office.

On September 25, 2012, the State filed another petition to revoke Ring's probation, this time on the basis that he had failed to lead a law-abiding life due to his August 16, 2012 arrest for aggravated cruelty to a dog, cat, or horse.² He was charged with this new crime on September 7, 2012. On May 14, 2013, the circuit judge filed docket notes for both cases stating, "Hearing on Defendant's fitness to proceed. Defendant is found fit to proceed." Ring pleaded guilty on May 20, 2013, to the new offense of aggravated cruelty to a dog, cat, or horse and was sentenced to time served and placed on probation for five years. The trial court also ordered Ring to seek mental-health counseling and to comply with all orders or recommendations of his counselor, therapist, or physician; to take any prescribed medications as ordered; to be subject to electronic monitoring; and to engage in no contact with certain family members.

On June 3, 2013, the State filed a petition to revoke Ring's probation in both cases, alleging that he had allowed his electronic-monitoring battery to go dead; had tampered with the ankle monitor so that it lost its signal; had removed the ankle monitor; and had made contact with his ex-wife in violation of the no-contact order imposed upon him. After a

²This petition for revocation was nolle prossed on May 23, 2013, in conjunction with Ring's plea of guilty to the aggravated-cruelty charge.

hearing on the State's petition on July 1, 2013, the circuit court revoked Ring's probation in both cases and sentenced him to six years in prison for the offense of cruelty to a dog, cat, or horse, with an additional six years' suspended imposition of sentence for the aggravated-assault and terroristic-threatening offenses. Ring timely filed a notice of appeal to this court.

Ring does not contest the sufficiency of the evidence to support the revocation of his probation. His sole point on appeal is that the trial court "was clearly erroneous in foregoing a mental evaluation pursuant to the mandatory language of A.C.A. § 5-2-305."

At the beginning of the revocation hearing, the prosecutor noted that this was the third time a revocation petition had been filed for the older case and the first time in the newer case, and that there was the "possibility of some fitness to proceed issues" that the court might need to inquire about before the revocation hearing began. The trial court noted that on May 14, 2013, another circuit judge had made a docket note indicating that there had been a hearing held on Ring's fitness to proceed and that Ring was found fit to proceed. The trial court then asked defense counsel if there was any issue with regard to fitness that had occurred since the May 14 determination that Ring was fit to proceed—defense counsel said no.

The statute at issue, Arkansas Code Annotated section 5-2-305(a) (Supp. 2011),³ provides:

(a)(1) Subject to the provisions of §§ 5-2-304 and 5-2-311, the court shall immediately suspend any further proceedings in a prosecution if:

(A) A defendant charged in circuit court files notice that he or she intends to rely upon the defense of mental disease or defect;

³This statute was amended by Act 506 of 2013.

(B) There is reason to believe that the mental disease or defect of the defendant will or has become an issue in the cause;

(C) A defendant charged in circuit court files notice that he or she will put in issue his or her fitness to proceed; or

(D) There is reason to doubt the defendant's fitness to proceed.

Ring argues that, due to the history of the existence of mental-health issues in both his cases and the fact that the prosecutor raised the possibility of fitness issues, the trial court should have immediately halted the proceedings and ordered an assessment pursuant to Arkansas Code Annotated section 5-2-305. We disagree.

We hold that Ring has waived this argument. Ring never filed notice that he intended to rely on a defense of mental disease or defect or that he would put into issue his fitness to proceed. Therefore, the question then becomes whether there was reason to believe that Ring had a mental disease or defect that would become an issue or if there was reason to doubt Ring's fitness to proceed. While it is true that the prosecutor made a passing comment regarding the possibility of a fitness-to-proceed issue, when questioned by the trial court as to whether there was any fitness-to-proceed issue that needed to be addressed, Ring's counsel answered in the negative. Therefore, Ring's fitness to proceed was simply not an issue before the trial court. Furthermore, because of defense counsel's assertion that there was no fitness-to-proceed issue, the trial court made no ruling on this issue. The burden is on the appellant to obtain a ruling from the trial court in order to preserve an argument for appeal. *Eastin v. State*, 370 Ark. 10, 257 S.W.3d 58 (2007) (citing *Romes v. State*, 356 Ark. 26, 144 S.W.3d 750 (2004)). Here, Ring's counsel declined to raise any issue regarding Ring's fitness to proceed;

therefore, the trial court made no ruling that can now be raised on appeal.

Even if it could be said that the trial court made a ruling denying a mental evaluation and that the issue had been preserved for appeal, we would still affirm. On appeal, appellate courts affirm where there is substantial evidence—evidence of sufficient force and character to compel a conclusion of reasonable and material certainty—to support the trial court’s findings with regard to a defendant’s fitness to proceed. *Bayless v. State*, 2010 Ark. App. 456. Competency to stand trial turns on whether an accused has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding, and if he has a rational and factual understanding of the proceedings against him. *Id.* A defendant in a criminal case is ordinarily presumed to be mentally competent to stand trial. *Id.*

In *Pyland v. State*, 302 Ark. 444, 446, 790 S.W.2d 178, 179 (1990), our supreme court held that “the decision whether to provide psychiatric assistance to one facing a revocation hearing must be on a case by case basis. While due process must be accorded the respondent, there is no entitlement to the full range of criminal trial safeguards because the court is not dealing with a person who had yet to be convicted of anything.” Our supreme court further held that while *Ake v. Oklahoma*, 470 U.S. 68 (1985), required that psychiatric assistance be provided to a defendant in a criminal trial who makes a preliminary showing that his sanity at the time of the commission of the crime will be a significant issue, this requirement does not apply to a proceeding that is not a part of the criminal trial. *Id.*

Here, Ring had undergone two separate psychiatric evaluations, one in December 2011 and the other in January 2013; both evaluations found that Ring was fit to proceed.

The docket notation of May 14, 2013, (the date the second psychiatric evaluation was filed with the court), stated that a hearing was held on Ring's fitness to proceed and Ring was found fit to proceed. This finding was made approximately six weeks before Ring's hearing on the State's petition to revoke his probation. When asked by the trial court whether there was any issue that needed to come before the court regarding Ring's fitness to proceed since the May 2013 determination, Ring's counsel said no. Given the fact that this was a probation revocation, not a criminal trial, and that Ring had undergone two evaluations in these cases already, there was no reversible error in proceeding with the revocation hearing.

Affirmed.

WALMSLEY and GRUBER, JJ., agree.

Paul J. Teufel, for appellant.

Dustin McDaniel, Att'y Gen., by: *Eileen W. Harrison*, Ass't Att'y Gen., for appellee.