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ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR09-9

LEROY STEVENSON APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** February 11, 2010 APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT [NO. CR-2008-702] HONORABLE CINDY THYER, JUDGE AFFIRMED IN PART AND REMANDED

JOHN MAUZY PITTMAN, Judge

Appellant was convicted of rape. He filed a timely post-trial motion for a new trial, alleging ineffective assistance of counsel and requesting a hearing. The trial court did not act on the motion, and it was deemed denied after the passage of thirty days. Appellant here argues that the trial court erred in finding that he was mentally competent to stand trial and in failing to grant him a hearing on the new-trial motion. We find merit in the second point.

We first discuss appellant's competency argument. The defense requested, and the circuit court ordered, that appellant be subjected to a mental examination to determine his fitness for trial. Immediately before trial, the prosecutor provided a copy of the report to the trial judge, stating that he believed the report indicated that appellant was fit to stand trial. Appellant did not object, and the trial was held.

On appeal, appellant argues that the trial court erred in failing to make a specific finding regarding appellant's mental competence. He further asserts that the record contains no report showing that he was fit to stand trial. Appellant is mistaken.

Arkansas Code Annotated section 5-2-309 (Repl. 2006) provides that:

> (a) If the defendant's fitness to proceed becomes an issue, the issue of the defendant's fitness to proceed shall be determined by the court.
>
> (b) If neither party contests the finding of the report filed pursuant to § 5-2-305, the court may make the determination under subsection (a) of this section on the basis of the report.
>
> (c) If the finding of the report is contested, the court shall hold a hearing on the issue of the defendant's fitness to proceed.

The trial court is not obligated to hold a hearing on the issue of competency when presented with an uncontradicted mental evaluation concluding that the defendant is fit to stand trial unless the findings of that evaluation are contested by either party. *Weston v. State*, 366 Ark. 265, 234 S.W.3d 848 (2006). Nor is the trial court obligated to make further findings under such circumstances. *McClellan v. State*, 264 Ark. 233, 570 S.W.2d 278 (1978). Here, neither party contested the mental examination. Moreover, contrary to appellant's assertion in his brief, the record does in fact contain a mental-examination report finding that appellant had no mental disease or defect and was fit to stand trial. It was appellant's burden to challenge the report and demonstrate that he was unfit. *Deason v. State*, 263 Ark. 56, 562 S.W.2d 79 (1978). Having failed to do so, he cannot raise the issue for the first time on appeal.

However, we agree with appellant's argument that the trial court erred in failing to hold a hearing on his timely motion for a new trial in which he asserted ineffective assistance of counsel. Appellant was entitled to a hearing under Ark. R. Crim. P. 33.3, and the failure to grant one is reversible error if the motion is stated in non-conclusory language and states specific grounds that could constitute ineffective assistance of counsel. *Halfacre v. State*, 265 Ark. 378, 578 S.W.2d 237 (1979); *Crouch v. State*, 62 Ark. App. 33, 968 S.W.2d 643 (1998). Here, appellant did not merely allege ineffective assistance, but instead cited specific acts by his attorney, *e.g.*, failure to subpoena alibi witnesses and obtain expert testimony. Appellant also asserted in the new-trial motion that his attorney coerced him to forego a jury trial and submit to a bench trial. These are concrete allegations, not conclusions, and the trial court should have granted a hearing to address them. We therefore remand for the trial court to conduct such a hearing, make findings, and enter an appropriate order.

Affirmed in part and remanded.

VAUGHT, C.J., and ROBBINS, J., agree.