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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re MATHEW S., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

MATHEW S.,

Defendant and Appellant.

F068214

(Super. Ct. No. JJD065299)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Tulare County. Jennifer Shirk,
Judge.

Caitlin U. Christian, under appointment by the Court of Appeal, for Plaintiff and
Respondent.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney
General, Daniel B. Bernstein and Jennifer M. Poe, Deputy Attorneys General, for
Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Poochigian, J. and Detjen, J.

INTRODUCTION

Appellant, Mathew S. (currently 18 years old), had a prior felony adjudication in 2011 for second degree burglary (Pen. Code, § 459)¹ and two misdemeanor adjudications in 2011; one for petty theft (§ 484, subd. (a)), and the other for being under the influence of Toluene (§ 381, subd. (a)). These adjudications brought appellant within the provisions of Welfare and Institutions Code section 602. Appellant also had three violations of probation between November 2011 and October 2012. On June 10, 2013, the probation department filed a new notice of violation of probation.

On July 29, 2013, the court found true the allegation that appellant violated the terms of probation. On August 27, 2013, appellant waived his constitutional rights and admitted allegations in a new petition that he was feloniously in receipt of or purchased a stolen vehicle (§ 496d) and a misdemeanor allegation that he was under the influence of methamphetamine (Health & Saf. Code, § 11550, subd. (a)). The parties stipulated to a factual basis for the plea.² The court noted that count 1 was a wobbler, and found it to be a felony. The juvenile court committed appellant to the Tulare County Youth Facility for 365 days.

Appellant contends the juvenile court erred in failing to order a competency hearing, violating appellant's right to due process. We disagree and affirm the findings and orders of the juvenile court.

¹ Unless otherwise indicated, statutory references are to the Penal Code.

² The factual basis for the plea was based on the prosecutor's statement that on July 17 appellant was stopped while he was driving a stolen vehicle. Appellant was also under the influence of methamphetamine when he was stopped and the test results were provided to defense counsel.

PROCEEDINGS

Initial Hearings

In April 2013,³ prior to the most recent allegation that appellant violated the terms of his probation, he had an appointment with youth services to initiate counseling sessions. Appellant had a scheduled assessment on May 6, but failed to appear for it. On July 19, appellant denied the allegation that he violated probation. The juvenile court detained appellant and the matter was set for a pretrial hearing. The juvenile court ordered that appellant be seen by mental health that day.

Hearing July 22

During the pretrial hearing on July 22, 2013, appellant informed the court that he was supposed to be taking medication but the authorities had not given it to him. Appellant's mother informed the court that appellant was supposed to be taking medication. Appellant's prescribed medications were Zoloft and Seroquel. Appellant's counsel indicated to the court this was a large issue because there was a new health care provider for the juvenile facility that automatically discontinued whatever medication a juvenile was taking. The juvenile court stated that it needed to find out why appellant was not receiving his medication and was concerned that children were being placed in danger by not giving them their medication.

Appellant's mother indicated that the medication appellant was taking was prescribed at the facility during a prior detention before he was sent home.⁴ The court told appellant it was not sending him home, but wanted appellant stabilized and acknowledged the responsibility the court had to make sure appellant was getting his

³ All of the relevant hearing dates occurred in 2013.

⁴ Mother told the probation department that appellant was diagnosed with a mood disorder.

medications. The court indicated that at the previous hearing on July 19, the court had been informed he would be seen by mental health that day. The court ordered that someone from mental health see appellant on July 22. The court set a review hearing for the next day.

Appellant's counsel met with appellant during a recess. After the recess, counsel told the court that appellant was going through "withdrawals" from the medication he had been prescribed for a very long time and had last taken his medications five days prior to the hearing. Counsel discussed the situation with probation and a psychiatrist was currently at the facility. Counsel proposed that appellant waive time and immediately see the psychiatrist so appellant could take the medication, stop going through withdrawals, and be "in a position to make a decision about this case." Counsel requested that once appellant was back on his medication, there should be a status hearing to see how appellant was doing.

Hearing July 23

The court noted a status hearing was set for the next day at 1:30 p.m. Counsel told the court he would contact the psychiatrist to confirm that appellant was back on his medication. The court ordered that appellant be seen by a mental health provider to give him an opportunity to stabilize. The probation officer informed the court appellant had an appointment to see the psychiatrist that day. The court noted that it would release appellant to a private psychiatrist if the juvenile facility could not meet appellant's needs.

When defense counsel suggested a continuance, the court pointed out that it would be better for appellant to be in a program rather than waiting in juvenile hall for a hearing. Defense counsel agreed to keep the scheduled hearing on violation of probation. At the status review hearing on July 23, the probation officer stated that appellant had been seen by Dr. Wong the day before, the doctor recommended medications, and those

prescriptions were being filled. The court maintained the court date for the violation of probation hearing.

Hearing July 29

The violation of probation hearing was held as scheduled on July 29. Appellant's probation officer testified that appellant was in attendance in his program providing wrap around services for the first two weeks. After that time, appellant was not attending services and was not in compliance with the terms of his probation. Furthermore, appellant's mother was not aware of where appellant was when she was contacted on May 23. A term of appellant's probation was to regularly attend school, but appellant only attended school 5 out of 20 days.

Appellant testified that he was aware of the terms and conditions of probation and had no good reason for failing to attend counseling services. Appellant said that he tried to contact his first probation officer to get back on track with his probation, but she did not return his calls. When appellant was not staying with his mother, he was staying with a brother.

Appellant's counsel informed the court that appellant had seen Dr. Wong and was given a prescription that was being filled, but appellant still had not received the medication. Appellant told the court he was prescribed Seroquel and Prozac by Dr. Wong. Appellant's mother informed the court that she had signed a medical release the day before the hearing. The court found appellant violated the terms of his probation and ordered his temporary placement with the probation department. The court scheduled a new review hearing for the next day to determine whether appellant had received his medication.

Appellant's mother informed the court that she would have given the juvenile hall authorities permission to give appellant his prescribed medications over the phone, but she believed she had to sign an authorization document. The court asked the probation

officer if in the future parents could telephonically authorize treatment for their detained children. The probation officer replied, "Yes." Both the court and defense counsel agreed that as soon as they learned there was something to be done in appellant's case, they would make sure it was done. The court stated that any new hurdles were going to get knocked down.

Appellant told the court he thought he had followed the probation officer's instructions. The court replied that appellant had failed to do so. The court explained it had put a lot of effort into helping him and that school and counseling were there to help appellant. The court noted that appellant was still young and thought he had a better plan for his life, but it was not working well for him and appellant needed to trust the court system and get back on track. Appellant told the court it was hard for him because he could not do anything in his cell because other detainees tried to start fights with him.

Appellant complained that he was safe at home but not in detention. The court replied that appellant was not safe at home because he was out when he should not have been. The court told appellant that until appellant got to the point where he was making the right choices, he had to be detained. The court observed that appellant had a lot of potential. Appellant replied that he just wanted to be home. The court stated that what appellant wanted was not necessarily what he needed. After appellant complained again about everyone wanting to fight him, the court asked the probation officer if probation could handle appellant's situation. The probation officer replied affirmatively.

Hearing July 30

At a review hearing on July 30, the probation officer informed the court that appellant had taken his prescribed medication.

Hearing August 12

On August 12, there was a hearing on the new petition alleging appellant had received or driven a stolen vehicle. The court, probation officer, prosecutor, and defense

attorney had an initial discussion concerning the options for a disposition of the new petition. The court noted its disagreement with the probation department's recommendation of continuing appellant on probation at home, and noted there were significant errors in the report. The court suggested putting the matter over for a few days for a further disposition report. Defense counsel said appellant wanted to proceed that day. The court noted it was inclined to place appellant into a long-term program.

Appellant told the court he was sincerely sorry for his recent behavior and understood why the court had no reason to believe him. Appellant referred to a letter he wrote to the court seeking leniency.⁵ Appellant appealed to the juvenile court to be placed at home with his mother, or alternatively, into a care home or group home. Appellant acknowledged his greatest problem was to get away from drugs and that he needed to be away from places where there were other users to have a better chance of quitting his use of drugs.

Appellant said he did not want to remain in custody with people who always talked to him about how much they wanted to get high. The court asked appellant if anyone helped him write the letter he sent to the court. Appellant replied that he wrote the letter himself. The court praised appellant for his writing and noted that he was very articulate. The court stated it was not inclined to place appellant into a group home and wanted an amended probation report.

There was a discussion about appellant's failure to leave his cell and to follow the rules. Appellant asserted the other juveniles kept trying to fight with him. The court explained that appellant had to contact supervisors in the juvenile facility to assist him, but appellant had to start following the rules. The matter was set for a jurisdiction/disposition hearing.

⁵ Appellant's correspondence to the court was not included in the appellate record.

Hearing August 27

Prior to taking appellant's change of plea in which he admitted the allegations in the new petition, the court advised him that the court was still inclined to send him to the youth facility program. Also before taking appellant's change of plea, the court asked appellant if he was under the influence of any drugs or medications that would make it difficult for him to understand the proceedings. Appellant replied, "No, ma'am." Appellant also replied that he had enough time to talk to his attorney.

After the court ordered appellant's confinement in the local youth facility, appellant asked if he would be placed back with his mother once he was released. The court replied that appellant would not spend the whole 365 days at the youth facility and as appellant progressed through the program, he would get furloughs and would be allowed to go home on an electronic monitor.

DISCUSSION

Appellant contends the juvenile court erred in not ordering a competency hearing because his counsel's concerns about appellant's mental health status and substance abuse raised doubt as to appellant's competency. Appellant argues that his right to due process was violated by the juvenile court's failure to conduct a competency hearing. We reject this contention.

The conviction of an accused person while he or she is legally incompetent violates due process and the accused is constitutionally entitled to a hearing concerning competency. The hearing on whether an accused is incompetent must be adequate to protect this right. (*Pate v. Robinson* (1966) 383 U.S. 375, 377-378, 385.) When there is evidence produced showing that the accused is incompetent, the trial court has a duty to conduct a competency hearing. (*Id.* at p. 385.) As with adult defendants, juveniles have a right to competency hearings in juvenile delinquency hearings as a matter of due process. (*James H. v. Superior Court* (1978) 77 Cal.App.3d 169, 174-175 (*James H.*))

“It is well established that the criminal trial of an incompetent defendant violates the due process clause of the state and federal Constitutions. [Citation.] Like an adult defendant, a minor has a right to a competency hearing in juvenile delinquency proceedings. [Citation.]” (*In re Ricky S.* (2008) 166 Cal.App.4th 232, 234.) The same standard is applied in adult and juvenile criminal proceedings. (*Ibid.*)

California Rules of Court, rule 5.645(d)(1) sets forth the procedure to be followed if the court finds that there is reason to doubt a child’s competency. This competency standard is consistent with the constitutional test of competency set forth in *Dusky v. United States* (1960) 362 U.S. 402 (*Dusky*) and this rule was adopted to conform to the holding in *James H., supra*, 77 Cal.App.3d 169. (Welf. & Inst. Code, § 709, subs. (a) & (e); *Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847, 857-858 (*Timothy J.*); *Tyrone B. v. Superior Court* (2008) 164 Cal.App.4th 227, 230-231 (*Tyrone B.*))

Welfare and Institutions Code section 709, subdivision (a) provides that when a minor’s counsel or the juvenile court expresses doubt as to the minor’s competency, the court shall suspend the proceedings if it finds “substantial evidence [raising] a doubt as to the minor’s competency” Incompetency is defined as the minor lacking, “sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lack[ing] a rational as well as factual understanding, of the nature of the charges or proceedings”

Evidence of incompetence may emanate from several sources, including the behavior of the accused, his or her irrational behavior and prior mental evaluations. More is necessary than bizarre actions or statements by the accused to raise a doubt about competency. A reviewing court generally gives great deference to a trial court’s decision whether to hold a competency hearing. (*People v. Kaplan* (2007) 149 Cal.App.4th 372, 383.)

An adult defendant, or in this case a juvenile, is presumed to be competent. (*People v. Ramos* (2004) 34 Cal.4th 494, 507 (*Ramos*); *People v. Hightower* (1996) 41 Cal.App.4th 1108, 1111.) To be entitled to a competency hearing, a defendant must exhibit more than bizarre or paranoid behavior, strange speech, or a preexisting psychiatric condition with little bearing on the question of defendant's ability to assist his or her counsel. (*Ramos, supra*, 34 Cal.4th at p. 508; also see *People v. Lewis* (2008) 43 Cal.4th 415, 524 (*Lewis*) [overruled on another ground in *People v. Black* (2014) 58 Cal.4th 912, 919].) A trial court's decision on whether to hold a competency hearing is entitled to deference because the court has the opportunity to observe the defendant during trial. (*Lewis, supra*, 43 Cal.4th at p. 525.)

Appellant's argument on appeal largely rests on his trial counsel's statement during the hearing on July 22 that appellant had not been given his medications in five days and was going through "withdrawals." Defense counsel was concerned about appellant making a decision about his case while not being on his medications. Although appellant saw Dr. Wong on July 22, and received prescriptions for Seroquel and Prozac at that time, there was a delay in filling the prescriptions because the juvenile authorities sought authorization from appellant's mother. Appellant apparently did not receive his medications until July 30. We granted appellant's request to take judicial notice of the approved uses of Seroquel.⁶

⁶ According to the manufacturer's website, Seroquel ER is approved for the following uses: "SEROQUEL XR is a once-daily tablet approved in adults for (1) add-on treatment to an antidepressant for patients with major depressive disorder (MDD) who did not have an adequate response to antidepressant therapy; (2) acute depressive episodes in bipolar disorder; (3) acute manic or mixed episodes in bipolar disorder alone or with lithium or divalproex; (4) long-term treatment of bipolar I disorder with lithium or divalproex; and (5) schizophrenia." The record is unclear whether appellant received Seroquel, or Seroquel XR. For the purposes of our analysis, we presume that both forms of Seroquel are approved for the above listed conditions.

It is clear that appellant suffered a delay in receiving his medications after he was detained in juvenile hall. Nothing in the record indicates that as a result of the delay in receiving his medications, appellant was unable to effectively communicate with his attorney or failed to understand the nature of the proceedings against him. It is unclear what symptoms appellant was undergoing from the lack of his prescribed medications because defense counsel only stated on July 22 that appellant was going through “withdrawals” after not receiving his medication for five days. Subsequently, there is no indication from defense counsel or appellant that he was suffering any infirmity that would call his competency into question. Defense counsel’s comments on July 22 are not evidence that appellant was legally incompetent.

The record does not indicate that appellant exhibited any bizarre or paranoid behavior or strange speech. Appellant’s mother told the probation department that appellant suffered from a mood disorder, but there is nothing in the record to show that this preexisting psychiatric condition had any bearing on appellant’s ability to assist his counsel. Indeed, appellant spoke to the court during the hearings and was able to clearly explain his concerns to the court, which were mostly related to his desire to leave detention and to go back home. Appellant was articulate and coherent in his speech throughout the proceedings, including those proceedings between July 22 and July 29, during the time he was not receiving his medications.

Appellant was examined by Dr. Wong on July 22. The juvenile court, and appellant’s counsel, had multiple opportunities to observe appellant’s behavior. Appellant’s counsel, Dr. Wong, and the juvenile court gave no indication that appellant was incompetent. The basic legal presumption is that appellant was competent unless there is substantial evidence indicating he was incompetent. There is no evidence of appellant’s incompetency other than his counsel’s comment about appellant suffering

withdrawals from his medication, and, what amounts to speculation on appeal concerning appellant's mental health status.

There are four essential facts in the record: (1) appellant's mother told the probation department that her son suffered from a mood disorder; (2) appellant was taking Seroquel and Zoloft prior to his detention; (3) Dr. Wong prescribed appellant Seroquel and Prozac on July 22, after appellant's detention; (4) appellant began taking his prescribed medications on or about July 29 due to a delay in Dr. Wong's prescriptions being filled. These facts do not establish, or create a presumption, that appellant's competency was questionable.

We agree with appellant that Seroquel is used to treat serious mental health conditions. Even assuming that appellant's mood disorder was a serious mental illness, however, we cannot presume from that fact alone that appellant was incompetent, or became incompetent, when he stopped taking his medications between July 17 and July 29. Such a conclusion is speculative.

There is no doubt that the juvenile facility delayed appellant's treatment with his prescribed medications. The juvenile court conducted review hearings and insured that appellant was examined by a psychiatrist and actually received his prescribed medications. The delay in appellant's receipt of his medications is regrettable, but cannot be attributed to the juvenile court and cannot lead to a presumption that appellant was incompetent. Without any evidence that appellant could not communicate with his counsel, or understand the nature of the proceedings, however, we do not find error in the juvenile court's failure to conduct a competency hearing in this case.

DISPOSITION

The findings and orders of the juvenile court are affirmed.