

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

DONALD EUGENE PATTERSON JR.,
Appellant.

No. 2 CA-CR 2014-0053
Filed March 4, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County

No. CR20130003001

The Honorable Deborah Bernini, Judge

The Honorable Paul E. Tang, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Jonathan Bass, Assistant Attorney General, Tucson
Counsel for Appellee

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Lori J. Lefferts, Pima County Public Defender
By David J. Euchner and Gregory J. Berger, Assistant Public
Defenders, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

ECKERSTROM, Chief Judge:

¶1 After a jury trial, appellant Donald Patterson Jr. was convicted of second-degree burglary and sentenced to an enhanced, presumptive prison term of 11.25 years.¹ This appeal followed. For the following reasons, his conviction and sentence are affirmed.

Factual and Procedural Background

¶2 Shortly before Patterson's trial was scheduled to begin, his attorney filed a motion for a competency examination pursuant to Rule 11, Ariz. R. Crim. P. In the motion counsel discussed Patterson's history of mental illness and stated that, during a recent visit with Patterson, counsel found that he had "debilitating short-term memory problems" and was "unable to finish sentences or hold thoughts in his head." Counsel further noted in the motion that Patterson seemed "completely unable to communicate effectively with defense counsel and to aid in his own defense." A hearing was set before the mental health court judge to determine whether a competency evaluation was necessary.

¹Patterson was also charged with possession of a dangerous drug, possession of drug paraphernalia, and promoting prison contraband. Those charges were severed from the burglary charge and resolved by a plea bargain. Patterson's appeal solely concerns the burglary conviction and sentence.

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¶3 At the hearing, the mental health judge asked Patterson if he had any comments to add to his motion. Patterson’s counsel responded that Patterson’s communication issues, in addition to causing him difficulty in assisting his attorney, would likely cause him difficulty if he chose to testify in his own defense. Counsel also explained that his defense would be severely hampered if Patterson were not able to testify at trial. The mental health judge denied the motion, saying, “Based on the opinions expressed by the mental health provider at the jail they have reason to believe that your client is faking. So the Court finds no reasonable basis for a mental status evaluation to take place.”

¶4 Patterson renewed the motion twice, once before jury selection and once at the close of the state’s evidence. The motion was denied both times. The first time the motion was denied on the basis that the trial judge believed it was “inappropriate” to “collaterally . . . review” the mental health judge’s findings. The second time the motion was denied, the trial judge noted that, based on his own observations, “[Patterson] certainly seemed to understand everything I asked him about. . . . He’s been on cue. And when I warned him about not doing anything that’s inappropriate with the victim, he seemed to be totally understanding my – my expectations. And, in fact, he’s complied totally since then.”

¶5 Patterson appealed, claiming the trial court committed either structural error or error that was not harmless in denying his Rule 11 motion. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 13-4033(A)(1).

Competency

¶6 Under Rule 11.2(a), a defendant may request an examination to determine whether he is competent to stand trial. If the court finds that reasonable grounds exist to believe the defendant may be incompetent, the court shall order the appointment of mental health experts to examine the defendant. Ariz. R. Crim. P. 11.3(a); *see* Ariz. R. Crim. P. 11.2(c), (d). A trial court has broad discretion in determining whether reasonable grounds exist to examine a defendant’s competency, and we will not

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disturb that determination absent an abuse of discretion. *State v. Johnson*, 147 Ariz. 395, 398, 710 P.2d 1050, 1053 (1985); *State v. Messier*, 114 Ariz. 522, 525, 562 P.2d 402, 405 (App. 1977). “Reasonable grounds exist when ‘there is sufficient evidence to indicate that the defendant is not able to understand the nature of the proceeding against him and to assist in his defense.’” *State v. Amaya-Ruiz*, 166 Ariz. 152, 162, 800 P.2d 1260, 1270 (1990), quoting *State v. Borbon*, 146 Ariz. 392, 395, 706 P.2d 718, 721 (1985).

¶7 When a court commits an error of law in reaching a discretionary conclusion, this may constitute an abuse of discretion. *State v. Wall*, 212 Ariz. 1, ¶ 12, 126 P.3d 148, 150 (2006). Patterson asserts the mental health judge abused her discretion by relying on undisclosed communications from “the mental health provider at the jail,” rather than the facts stated in his motion, in concluding no reasonable grounds existed for a mental health evaluation. We agree.

¶8 The state correctly asserts that “nothing in Rule 11 provides that the court . . . cannot use information about the defendant from mental health authorities at the jail.” We do not suggest otherwise. But the information the mental health judge received from the jail was never disclosed to Patterson, depriving him of any opportunity to evaluate or challenge it.² Cf. *State v. Watton*, 164 Ariz. 323, 328, 793 P.2d 80, 85 (1990) (“A defendant denied the opportunity to challenge the accuracy of the [presentence] report . . . has been denied a fair sentencing.”); *State v. Guadagni*, 218 Ariz. 1, ¶ 23, 178 P.3d 473, 479 (App. 2008) (trial court violated defendant’s right to due process in ordering restitution based on information defendant had no opportunity to challenge). Indeed, the judge ruled without placing on the record the bases of the jail staff’s conclusion. The record before us tells us nothing

² Although Patterson likely could have obtained this information through his own investigation after the mental health court hearing, the trial occurred only one week thereafter, leaving him very little time to secure those records, marshal the expertise necessary to challenge the conclusions therein, and file a motion for reconsideration before trial began.

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about whether the conclusion of malingering was drawn by a trained psychologist or lay staff. Nor can we divine whether that conclusion was based on a comprehensive observation of the defendant, reliable testing, or neither. It is a fundamental principle of due process that a defendant has a right to see the evidence against him. *See State v. Gulbrandson*, 184 Ariz. 46, 63, 906 P.2d 579, 596 (1995) (“Defendant has a due process right to timely disclosure of material evidence.”). Accordingly, we conclude the mental health judge abused her discretion in determining no reasonable grounds existed to order a mental health examination when she based that conclusion exclusively on information that had not been disclosed to the moving party. And because the trial judge’s denial of Patterson’s first renewal of the motion was based solely on the mental health judge’s ruling, it did not cure the error.

¶9 However, on the second and final day of the jury trial, when Patterson presented his Rule 11 motion for the third time, the trial court, based on its own observations of and communications with Patterson, found no reasonable grounds for such an examination. *See State v. Moody*, 208 Ariz. 424, ¶ 48, 94 P.3d 1119, 1138 (2004) (“In determining whether reasonable grounds exist, a judge may rely, among other factors, on his own observations of the defendant’s demeanor and ability to answer questions.”). We recognize that a defendant’s behavior at trial, by itself, is not a sufficient basis upon which a court may find a defendant competent to stand trial when that defendant has a “history of pronounced irrational behavior.” *Pate v. Robinson*, 383 U.S. 375, 385-86 (1966); *see Drope v. Missouri*, 420 U.S. 162, 179-80 (1975). But in *Robinson* and *Drope*, the defendants had past records of bizarre behavior and extreme violence towards themselves and others. *Drope*, 420 U.S. at 165-66; *Robinson*, 383 U.S. at 378-382.

¶10 Here, Patterson relies on a history of mental illness and communication issues, which does not rise to the level of irrational behavior noted in *Robinson* and *Drope*. *See, e.g., United States v. Mitchell*, 709 F.3d 436, 440-41 (5th Cir. 2013); *Mendez v. Knowles*, 556 F.3d 757, 772 (9th Cir. 2009); *Jermyn v. Horn*, 266 F.3d 257, 292-94 (3d Cir. 2001). And in *Drope*, the Court noted that “we do not . . . suggest that courts must accept without question a lawyer’s

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representations concerning the competence of his client.” 420 U.S. at 177 n.13. Patterson’s counsel provided no documentation of his client’s mental illness apart from his own avowals regarding the defendant’s behavior and past history. Moreover, if a judge’s observations, standing alone, could never be a sufficient ground to deny a Rule 11 motion, courts would be required to order further mental health proceedings on such avowals alone.

¶11 Furthermore, the trial judge did not have access to the information erroneously used by the mental health judge, nor did he rely on the mental health judge’s previous conclusion in his second ruling on the Rule 11 motion. *Cf. State v. Cameron*, 146 Ariz. 210, 215, 704 P.2d 1355, 1360 (App. 1985), *citing State v. Garcia*, 97 Ariz. 102, 104, 397 P.2d 214, 216 (1964) (because judges are presumed to ignore improper evidence, in bench trial erroneously admitted evidence may be harmless error). The trial judge’s second finding that reasonable grounds did not exist to require a competency evaluation, therefore, was not in error.

¶12 Because the trial court’s ultimate determination that no reasonable grounds existed to require a competency evaluation was not an abuse of discretion, the mental health judge’s previous ruling, although erroneous, was harmless error.³ Accordingly, Patterson’s conviction and sentence are affirmed.

³Patterson also claims structural error occurred because a competency evaluation was never performed, and it is therefore possible that he was not competent to stand trial. Because the ultimate determination that no reasonable grounds existed for a competency evaluation was not erroneous, we conclude no structural error occurred.