

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE ARNOLD TINER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34806

FILED

OCT 10 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Schmidt*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of sexual assault of a child under sixteen years of age and statutory sexual seduction. Appellant Bruce Arnold Tiner was sentenced to a prison term of life with the possibility of parole after twenty years and a consecutive term of twelve to thirty-six months. Tiner claims that the district court erred in denying his motion for a psychiatric evaluation of his competency.

The State originally charged Tiner with three counts of sexual assault of a child under sixteen years of age and two counts of statutory sexual seduction. After a preliminary hearing in April 1998, he was bound over on all five counts. Tiner signed a written plea agreement on March 17, 1999. Two days later, the district court canvassed him regarding the plea. Tiner said he was satisfied with his counsel, denied having any problems with his physical or mental health, and denied that anyone had coerced or intimidated him to cause his

plea. Tiner also admitted to the factual basis for the offenses. The court accepted the plea, finding that Tiner offered it "voluntarily, knowledgeably, and intelligently."

When Tiner appeared for sentencing on May 21, 1999, he demanded new counsel. After questioning Tiner and the deputy state public defender representing him, the district court relieved the public defender and continued the sentencing. After new counsel was appointed, Tiner moved to stay sentencing and requested a psychiatric evaluation. On July 16, 1999, the court heard argument on the motion and denied it, finding no reasonable doubt as to Tiner's competency.

Tiner asserts that the district court erred. He relies on NRS 178.405, which provides: "When . . . the defendant is brought up for judgment, if doubt arises as to the competence of the defendant, the court shall suspend . . . the pronouncing of the judgment, . . . until the question of competence is determined."

NRS 178.405 refers to "doubt in the mind of the trial court, rather than counsel or others. A determination whether doubt exists rests largely within the discretion of the trial judge." Williams v. State, 85 Nev. 169, 174, 451 P.2d 848, 852 (1969) (citation omitted). Incompetent "means that the person is not of sufficient mentality to be able to understand the nature of the criminal charges against him, and because of that insufficiency, is not able to aid and assist

his counsel in the defense . . . against the pronouncement of the judgment." NRS 178.400(2); see also Riker v. State, 111 Nev. 1316, 1325, 905 P.2d 706, 711 (1995).

Absent a reasonable doubt as to a defendant's competency, the district court is not required to order a competency examination. Jones v. State, 107 Nev. 632, 638, 817 P.2d 1179, 1182 (1991). In determining whether a competency hearing is required, the court should focus on three factors: any history of irrational behavior by the defendant, his demeanor before the court, and any prior medical opinion of his competency. Melchor-Gloria v. State, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983) (citing Drope v. Missouri, 420 U.S. 162, 180 (1975)).

The only basis for a psychiatric examination presented in this case was Tiner's claim that, as his counsel represented to the district court, he "has had a tendency through his whole life to be easily swayed . . . and basically coerced, essentially" and that this was the reason he pleaded guilty. Even if this tendency is a fact, it did not provide cause for a competency examination. The record is bereft of any history of irrational behavior by Tiner. The district court directly observed Tiner's demeanor during the proceedings below, including when he made his guilty plea. There was no prior medical opinion specifically on Tiner's competency, but a Division of Parole and Probation psychologist carried out a presentence psychosexual evaluation

of Tiner. The district court noted and the record shows that the evaluation did not indicate any incompetency.


The record reflects no reason to doubt Tiner's competency. The district court therefore acted within its discretion in denying his motion for a psychiatric evaluation.¹ Accordingly, we affirm the judgment of conviction.

It is so ORDERED.




Shearing

J.



Agosti

J.



Leavitt

J.

cc: Hon. Merlyn H. Hoyt, District Judge
Attorney General
Eureka County District Attorney
Rick Lawton
Eureka County Clerk

¹The parties also argue whether Tiner's guilty plea was knowing and voluntary. This is not an appropriate issue for direct appeal. See *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).