

RENDERED: JANUARY 11, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2011-CA-000891-MR

BENJAMIN JENKINS

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT  
HONORABLE ANTHONY W. FROHLICH, JUDGE  
ACTION NO. 10-CR-00477

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, DIXON AND STUMBO, JUDGES.

STUMBO, JUDGE: Benjamin Jenkins appeals from his conviction in the Boone Circuit Court. He argues that the trial court erred when it failed to evaluate his competency to stand trial and hold a competency hearing. We find no error and affirm.

On September 7, 2010, Jenkins was indicted by the Boone County Grand Jury and charged with theft by unlawful taking over \$500 and being a persistent felony offender. Jenkins was appointed an attorney, but wanted to represent himself as co-counsel. On November 1, 2010, the court ordered Jenkins be allowed to do so, but required him to undergo a psychiatric evaluation to ensure he could effectively participate during his trial. The evaluation was also ordered, in part, because Jenkins had been diagnosed as depressed in 2002. Jenkins had been taking medication for this depression, but since his arrest, he had not been receiving his medication.

On January 5, 2011, a competency hearing was held. Dr. Stephen Sparks, who evaluated Jenkins, testified. The trial court also reviewed a report from Dr. Sparks. Dr. Sparks was of the opinion that Jenkins was competent and that his depression would not interfere with his ability to participate at trial. The trial court found Jenkins competent to stand trial.

February 24, 2011, was scheduled as the first day of trial. Jenkins initially refused to come to court and had to be delivered there by the Boone County Sheriff's Office. Jenkins stated that he was dissatisfied with his counsel, but did not wish to proceed fully *pro se*. Defense counsel did not understand why Jenkins was dissatisfied with his performance. During a discussion with the trial judge, defense counsel requested another competency hearing. The trial judge declined to hold another competency hearing, but did continue the trial for five

days. After a trial by jury, Jenkins was found guilty of theft by unlawful taking and persistent felony offender in the first degree. This appeal followed.

Kentucky Revised Statute (KRS) 504.100 states:

(1) If upon arraignment, or during any stage of the proceedings, the court has reasonable grounds to believe the defendant is incompetent to stand trial, the court shall appoint at least one (1) psychologist or psychiatrist to examine, treat and report on the defendant's mental condition.

(2) The report of the psychologist or psychiatrist shall state whether or not he finds the defendant incompetent to stand trial. If he finds the defendant is incompetent, the report shall state:

(a) Whether there is a substantial probability of his attaining competency in the foreseeable future; and

(b) What type treatment and what type treatment facility the examiner recommends.

(3) After the filing of a report (or reports), the court shall hold a hearing to determine whether or not the defendant is competent to stand trial.

In the case at hand, a competency hearing was held on January 5, 2011. The trial court found Jenkins competent to stand trial. Almost two months later, defense counsel requested another competency evaluation. Did the trial court err in not requiring a second competency evaluation and hearing?

The standard of appellate review of a trial court's competency decision is "[w]hether a reasonable judge, situated as was the trial court judge whose failure to conduct an evidentiary hearing is being reviewed, should have experienced doubt with respect to competency to stand trial." It is within the trial court's sound discretion to determine whether "reasonable grounds" exist to

question competency, though once such grounds do exist, a competency hearing is mandatory.

*Woolfolk v. Commonwealth*, 339 S.W.3d 411, 423 (Ky. 2011)(citations omitted).

We find that there was no error by the trial court. A competency hearing had been held less than two months prior. During the hearing, Dr. Sparks testified about his interview with Jenkins. He also testified that he had reviewed past medical and mental health records. Dr. Sparks opined that Jenkins was competent to stand trial. His findings were undisputed during the hearing. Jenkins' behavior on February 24 did not cause the trial judge to doubt Jenkins' competency; Jenkins was merely upset with his trial counsel.

In this case, a reasonable judge would not have experienced doubt as to Jenkins' competency to stand trial. The trial judge did not abuse his discretion in declining to order a second competency evaluation and hearing; therefore, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

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