

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 11AP-11
	:	(C.P.C. No. 10CR-07-4266)
Ricky A. Underwood, Jr.,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on January 10, 2012

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Christopher F. Cowan, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Ricky A. Underwood, Jr., is appealing from his conviction on a charge of felonious assault, following his guilty plea to that charge. He assigns four errors for our consideration:

[1.] The trial court plainly erred by failing to sua sponte order a competency evaluation of Underwood prior to accepting his guilty plea pursuant to *North Carolina v. Alford*, thereby resulting in the deprivation of his right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution.

[II.] The trial court plainly erred when it accepted Underwood's guilty plea pursuant to *North Carolina v. Alford*, without first determining whether he entered the plea knowingly, voluntarily and intelligently, with an understanding of the nature of the charge against him, as required by Crim.R. 11(C)(2)(a) and due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution.

[III.] The trial court plainly erred when it accepted Underwood's guilty plea pursuant to *North Carolina v. Alford*, without first determining whether he entered the plea knowingly, voluntarily and intelligently, with an understanding of this type of plea, as required by Crim.R. 11 (C)(2)(b) and due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution.

[IV.] Underwood received ineffective assistance of counsel, when his trial counsel failed to move for a competency evaluation, and did not object to the court's failure to determine that Underwood understood the charge against him and the meaning of plea pursuant to *North Carolina v. Alford*, as required by Crim.R. 11(C)(2)(a) and (b), thereby resulting in the deprivation of Underwood's right to effective assistance of counsel and due process of law, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, and Sections 10 and 16, Article I of the Ohio Constitution.

{¶2} Underwood entered a guilty plea as part of a plea bargain. Since he was charged only with felonious assault in the indictment, no other charges were dismissed. His only benefit from the plea bargain was a joint recommendation from the prosecution and his counsel that he be incarcerated for five years and not for the maximum amount allowed by statute, namely eight years.

{¶3} After he arrived in prison, he filed papers seeking to appeal. Since his notice of appeal was only two days late, a delayed appeal was granted by a panel of this court.

{¶4} The record before us clearly demonstrates that on July 12, 2010, James Bowen was stabbed and seriously injured. Someone knowingly did physical harm to Bowen while using a deadly weapon. Thus, the elements of R.C. 2903.11, felonious assault, were met. The only question for purposes of a trial would have been who stabbed Bowen.

{¶5} In a hearing before the plea was actually entered, the State of Ohio asserted that it had four witnesses who would testify that Underwood was the person who stabbed Bowen. Underwood asserted that he was not the person who did the stabbing, but at the time of entering his guilty plea acknowledged for purposes of *North Carolina v. Alford* (1970), 400 U.S. 25, 91 S.Ct. 160, that the State of Ohio had sufficient proof that a judge or jury could find him guilty, despite his claim of innocence. Specifically, after the trial judge explained an *Alford* plea (Tr. 24) and after Underwood consulted with his attorney, Underwood stated "I'll go with the plea, Your Honor." (Tr. 25.)

{¶6} The trial judge who accepted the guilty plea was very careful to follow Crim.R. 11 in conducting the plea proceedings. The judge also went out of his way to explain what was going on and what rights were being given up in very simple, easy-to-understand language. There is nothing in the transcript of the plea proceedings to support an allegation that Underwood was not fully aware of what was happening with respect to his *Alford* plea or otherwise. In formal terms, he proceeded knowingly, intelligently and voluntarily, as the trial judge explicitly found.

{¶7} The second and third assignments of error are overruled.

{¶8} The remaining issues center around the question of whether Underwood was competent to stand trial and/or enter a guilty plea.

{¶9} The record before us indicates that Underwood had "difficulty understanding a lot of the legal terminology" (Tr. 3), but not that he was incapable of understanding it—especially with the help of counsel.

{¶10} The trial court had been advised that, due to his limitations, Underwood's parents had established a guardianship over him so that they could take care of many of his daily needs. (Tr. 8.)

{¶11} The prosecution also advised the court that police had discontinued their efforts to question Underwood at the time of his arrest due to doubts about whether Underwood understood the rights he would be giving up by choosing to talk to them. The details of this questioning are not in the record on appeal.

{¶12} Under the circumstances, the trial court would have been within its discretion to order a competency evaluation. However, the record does not reveal that Underwood was incapable of understanding the criminal court proceedings and assisting in his own defense, especially when issues were explained in very simple terms such as the trial judge used here. The record does not present a situation where a sua sponte order for a competency evaluation was required.

{¶13} Nothing in the record before us indicates that Underwood suffers from mental illness, only that he is intellectually limited. The trial court was careful to allow for those limitations. The trial court noted on the record:

I'll further find that I did go over the issues under North Carolina versus Alford. The Defendant appeared to understand those issues, and he understands that by the finding of guilty it will go in as a guilty at this point in time on the guilty conviction, okay?

I'll further find that the Defendant knowingly and intelligently entered a plea with a full understanding of the various consequences, including the maximum penalties.

I'll further find that Mr. Underwood and I had a discussion on the record. He was very attentive. He appeared to understand his rights, asked questions in appropriate places, and he appeared to knowingly and voluntarily give those rights up.

(Tr. 29.)

{¶14} Again, under the circumstances, the trial court was not obligated to sua sponte order a competency evaluation.

{¶15} The first assignment of error is overruled.

{¶16} We also cannot find that trial counsel rendered ineffective assistance of counsel by failing to request a competency evaluation. Counsel met with Underwood privately. Counsel could and did make a professional representation to the court that Underwood was proceeding knowingly, intelligently and voluntarily in entering the guilty plea. (Tr. 23.)

{¶17} Again, intellectual slowness does not equate with a lack of competency.

{¶18} The fourth assignment of error is overruled.

{¶19} All four assignments of error having been overruled, the judgment of the trial court is affirmed.

Judgment affirmed.

BROWN, P.J., and DORRIAN, J., concur.
