

[Cite as *State v. Shine*, 2016-Ohio-1445.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

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|----------------------|---|---------------------|
| STATE OF OHIO, |) | |
| |) | |
| PLAINTIFF-APPELLEE, |) | CASE NO. 15 MA 0210 |
| |) | |
| V. |) | OPINION |
| |) | AND |
| DORINA SHINE, |) | JUDGMENT ENTRY |
| |) | |
| DEFENDANT-APPELLANT. |) | |

CHARACTER OF PROCEEDINGS: Competency Finding

JUDGMENT: Dismissed

APPEARANCES:
For Plaintiff-Appellee

Ralph M. Rivera
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For Defendant-Appellant

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JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: March 23, 2016

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PER CURIAM.

{¶1} This matter concerns an appeal from an October 23, 2015 judgment entry of the Mahoning County Common Pleas Court finding Appellant competent to stand trial. In a judgment entry filed December 11, 2015, this Court gave the parties 30 days to file jurisdictional statements addressing whether the order appealed from is a final, appealable order. Each side has done so; although, Appellant's statement was filed one day late.

{¶2} In 2011, a Mahoning Country grand jury indicted Appellant for second-degree-felony felonious assault. She entered pleas of not guilty and not guilty by reason of insanity. Following two court-ordered evaluations, the trial court found her competent to stand trial in 2014. Appellant appealed that decision to this Court. In addition to being untimely, this Court also dismissed the appeal based on our finding that an order finding a defendant competent to stand trial is not a final order as defined by R.C. 2505.02. *State v. Shine*, 7th Dist. No. 14 MA 36 (June 13, 2014).

{¶3} Thereafter, in the trial court, Appellant filed a motion for findings of fact and conclusions of law regarding its competency finding. On December 2, 2014, the trial court filed a judgment entry incorporating findings of fact and conclusions of law, including a finding that testimony had established that the claimed altered mental state on the date of the charged offense was self-induced by Appellant voluntarily smoking marijuana just prior to engaging in the conduct as alleged in the indictment. Appellant did not appeal that judgment entry.

{¶4} In April 2015, Appellant's trial counsel persuaded the trial court to allow yet another, third competency evaluation. Appellant's trial counsel had noted Appellant's "refusal" to prepare her testimony for trial with him. Trial counsel was uncertain whether her "refusal" stemmed from Appellant's "unwillingness" or "inability" to do so. On October 5, 2015, Appellant's trial counsel followed up with a motion for an appropriation of funds concerning the additional evaluation that the trial court had allowed for in April. Meanwhile, the trial court apparently reconsidered and in a judgment entry filed on October 23, 2015, denied Appellant's motion for an appropriation of funds concerning the additional evaluation. The court also found Appellant competent to stand trial, apparently letting the court's 2014 competency

finding stand. This appeal followed.

{¶15} Appellant's principal argument is that a judgment entry finding a criminal defendant competent to stand trial is a final, appealable order under the Ohio Supreme Court's decision in *State v. Anderson*, 138 Ohio St.3d 264, 2014-Ohio-542, 6 N.E.3d 23. In *Anderson*, the Ohio Supreme Court held that an order denying a motion to dismiss on double-jeopardy grounds is a final, appealable order. The Court concluded that a criminal defendant would not be afforded a meaningful review of an adverse decision on such a motion reasoning that the double-jeopardy clause is not just a protection against being punished twice for the same offense, it is also a protection against being tried twice for the same offense.

{¶16} Upon review, we find Appellant's argument unpersuasive. Quite simply, an order finding a criminal defendant competent to stand trial does not implicate double-jeopardy considerations.

{¶17} Appellant also puts forth the more general argument that the "conviction of an accused while he is not legally competent to stand trial violates due process of law," citing *Pate v. Robinson*, 383 U.S. 375, 378, 15 L.E. 2d 815, 86 S.Ct. 837 (1966). (Appellant's Jurisdictional Statement, p.2.) Put more accurately, "the failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial." *Drope v. Missouri*, 420 U.S. 162, 172-73, 95 S.Ct. 896, 904, 43 L.Ed.2d 103 (1975), citing *Pate*. Thus, contrary to Appellant's assertion, the right not to be tried or convicted while incompetent to stand trial does not accord an absolute right to be free from trial. Notably, the cases cited by Appellant in this regard involved defendants who were not afforded an opportunity to raise the issue of their competence prior to trial. In other words, those cases involved situations where an allegedly incompetent defendant was afforded no due process at all on the issue of their competency to stand trial in the first instance. Moreover, all of the cases cited by Appellant address the absence of any due process at the trial level on the issue of competency at the trial level. None of them hold or even suggest that a defendant should have the ability to immediately appeal a trial court's competency finding.

{¶18} Since the United States Supreme Court's decision in *Pate*, Ohio has put in place adequate procedures which comport with due process to protect a defendant's right not to be tried or convicted while incompetent to stand trial. R.C. 2945.37 and R.C. 2945.371 set forth a comprehensive statutory procedure for a trial court to follow if a defendant's competence to stand trial is at issue. The issue can be raised by counsel or the court itself. Once the issue has been raised, the trial court is required to hold a hearing at which defense counsel can present evidence concerning the defendant's competence. The statutes also set forth detailed procedures for the trial court to follow when ordering one or more evaluations of the defendant's mental condition. In this instance, Appellant's due process rights were more than adequately protected in this regard. The trial court ordered two competency evaluations by outside experts, held multiple hearings on the issue of Appellant's competency to stand trial, and issued findings of fact and conclusions of law.

{¶19} In sum, an order finding a criminal defendant competent to stand trial is not a final, appealable order. *In re J.W.*, 11th Dist. No. 2009-G-2939, 2010-Ohio-707. The defendant is afforded a meaningful and effective remedy by way of appeal after the case is completely resolved in the trial court.

{¶110} Appeal dismissed for lack of a final, appealable order.

{¶111} Costs taxed against Appellant.

{¶112} Copy to counsel of record and Judge Lou A. D'Apolito (Mahoning County Common Pleas Court Case No. 2011 CR 330).

Donofrio, P.J. concurs.

Waite, J. concurs.

DeGenaro, J. concurs.