

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 3, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-0842-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01CM010067

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

RANDOLPH M. MARTIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: WILLIAM SOSNAY and VICTOR MANIAN, Judges. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Randolph M. Martin appeals from a judgment entered after he pled guilty to operating a firearm while intoxicated and disorderly conduct while armed. He also appeals from a postconviction order

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2001-02).

denying his request to vacate the judgment. Martin claims the trial court erred when it entered judgment on his guilty pleas without first requiring that a mental health competency evaluation be conducted. Because the trial court did not err, this court affirms.

I. BACKGROUND

¶2 On November 6, 2001, city of Milwaukee police were called to a residence on East Grange Avenue in response to a report of gunshots. At that time they encountered Crystal Brunner, who was exiting the residence. She advised that Martin, her father, pointed a rifle at her and threatened to kill her. She also reported that he had discharged the weapon into a phone book. The police also encountered Martin's six-year-old son, Benjamin Martin, who was present in the kitchen of the home when Martin fired two rounds into the ceiling. The police recovered a number of empty 16-ounce beer cans. It was later determined that Martin's blood alcohol count was .193.

¶3 Martin was arrested for operating a firearm while intoxicated. He was charged with endangering safety by use of a dangerous weapon while under the influence of an intoxicant and disorderly conduct, while armed, contrary to WIS. STAT. §§ 941.20(1)(b), 947.01 and 939.63 (2001-02). On December 18, 2001, Martin entered guilty pleas to both offenses and was subsequently sentenced to nine months in the House of Correction for each count, consecutive. The sentences were stayed, however, and Martin was placed on probation for three years, with four months of conditional jail time.

¶4 Martin now appeals.

II. DISCUSSION

¶5 Martin contends the trial court erred in allowing him to enter guilty pleas without ordering a competency exam. This court rejects Martin's contention.

¶6 It is undisputed in this case that the issue of Martin's mental health was raised by both sides. On the night of his arrest, Martin was evaluated by Wisconsin Correctional Services (WCS) for any mental health problems and released. There was some concern about his mental health because of depression he experienced some time ago, and medication related to that depression that he had stopped taking. As a result of the mental health issues, the trial court decided that WCS should "re-interview" Martin as a "precaution." As a condition of his probation, Martin was supposed to undergo a mental health evaluation by the probation department and engage in any psychological counseling and treatment ordered as a result.

¶7 As is clear from the foregoing, and from a review of the record, there were concerns raised about Martin's mental health. However, Martin confuses those concerns with the issue of *competency*. Martin argues that due process requires that a court raise the issue of a defendant's competence if there is evidence to raise legitimate doubt as to the competence of the defendant. *See Pate v. Robinson*, 383 U.S. 375 (1966). In Martin's case, there was no evidence and there was no concern about his *competence*. Evidence in the record demonstrates that Martin was fully competent to proceed with the case. He knowingly, voluntarily, and intelligently entered guilty pleas. His attorney advised the court during the plea proceeding that the depression was from a long time ago and Martin did not need monitoring by WCS. It was represented that

Martin did not have any mental health problems in the last year, and Martin was not exhibiting any signs of mental health problems.

¶8 Martin has failed to produce any evidence to raise a bona fide doubt as to his competence to proceed in this matter. Accordingly, the trial court did not err in accepting the guilty pleas or in denying his order to vacate the judgment.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

