COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-325

COMMONWEALTH

vs.

ROBERT BROWN.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

On July 25, 2001, the defendant pleaded guilty in the Superior Court to aggravated rape, assault by means of a dangerous weapon, and armed robbery. He was sentenced to concurrent prison terms of ten years to ten years and one day for the aggravated rape and three to five years for the assault by means of a dangerous weapon, with a consecutive five-year probationary term for the armed robbery. Nearly seventeen years later, on July 3, 2018, the defendant filed a motion for new trial, asserting that there was "a substantial question as to his competency" at the time of the guilty pleas. A different judge than the plea judge (motion judge) denied the motion after

an evidentiary hearing at which the defendant called two mental health experts to testify.[1] We affirm.

Discussion. 1. Standard of review. A postsentence motion to withdraw a guilty plea is treated as a motion for new trial pursuant to Mass. R. Crim. P. 30 (b), as appearing in 435 Mass. 1501 (2001). See Commonwealth v. Fanelli, 412 Mass. 497, 504 (1992). We review the decision whether to allow a new trial under Mass. R. Crim. P. 30 (b) for an abuse of discretion, and the motion judge's decision will not be reversed unless manifestly unjust. See Commonwealth v. Diaz Perez, 484 Mass. 69, 73 (2020). Where, as here, the motion judge did not preside at the defendant's plea hearing, "we defer to that judge's assessment of the credibility of witnesses at the hearing on the new trial motion, but we regard ourselves in as good a position as the motion judge to assess the [plea] record." Commonwealth v. Grace, 397 Mass. 303, 307 (1986).

2. Plea hearing. On our independent review of the transcript of the plea colloquy, we conclude that that the plea judge's failure to order a competency hearing at the time of the defendant's guilty pleas was not error. The standard for competence to plead guilty, which is equivalent to the standard

[1] By the time of the motion for new trial, the plea judge had retired.

for competence to stand trial, see Commonwealth v. Russin, 420 Mass. 309, 316 (1995), is whether the defendant "has sufficient present ability to consult with his [or her] lawyer with a reasonable degree of rational understanding -- and whether [the person] has a rational as well as factual understanding of the proceedings against him [or her]." Dusky v. United States, 362 U.S. 402, 402 (1960). Accord Commonwealth v. Vailes, 360 Mass. 522, 524 (1971). Although defense counsel did not raise the defendant's competence, the plea judge nevertheless was obligated to order a competency hearing on her own initiative if "no less on hindsight than by foresight, there were elements of [incompetence] in the situation as, if proper notice had been taken of them, could present a substantial question of possible doubt as to [the defendant's] competency." Commonwealth v. Hill, 375 Mass. 50, 54 (1978), quoting Rhay v. White, 385 F.2d 883, 886 (9th Cir. 1967). Accord Commonwealth v. Carson C., 489 Mass. 54, 60 (2022).

We disagree with the defendant's assertion that there was "ample evidence" during the plea colloquy to signal to the judge that a competency hearing was required. The plea colloquy was extensive and detailed. The defendant answered the judge's questions clearly and coherently. See Carson C., 489 Mass. at 65-66 ("That a defendant's statements are responsive to the circumstances supports a judge's finding of competency");

Commonwealth v. DeMinico, 408 Mass. 230, 236 (1990). He denied suffering from mental health problems at the time of the colloquy and explicitly confirmed his ability to consult with his lawyer and to understand the proceedings. The judge addressed the defendant's history of substance abuse and potential mental health concerns, and she identified and resolved to her own satisfaction issues with the defendant's in-court presentation. See Commonwealth v. Goldman, 12 Mass. App. 699, 708, (1981) (in determining whether competency hearing was warranted, "weight must be afforded to the [plea] judge's first-hand opportunity to observe the defendant"). In addition, defense counsel certified that she was satisfied that the defendant understood her explanation of his rights, the factual basis for the pleas, the nature of the offenses, his possible defenses, and the consequences of his guilty pleas. At the conclusion of the colloquy, the judge found that the defendant's pleas were knowing, voluntary, and intelligent; unimpaired by drugs, alcohol, or mental illness; made with a full understanding of the factual basis and consequences; and guided by sufficient consultation with experienced counsel.

The defendant's reliance on Hill, 375 Mass. at 57-58, and Commonwealth v. Simpson, 428 Mass. 646, 650-652 (1999), is misplaced here. In Hill, the defendant had a decades-long history of "irrational and bizarre behavior" and treatment in

mental hospitals. Hill, supra. In Simpson, despite his otherwise competent appearance, there were concerns raised about the defendant's competence before trial and he behaved irrationally while representing himself at trial. See Simpson, supra at 652. The circumstances of this case raise no such issues. To be sure, the defendant had a history of drug abuse, presented with an unusual affect, and described having experienced drug withdrawal symptoms in the weeks preceding the plea hearing. However, as discussed, the judge addressed those concerns thoroughly and appropriately during the plea hearing and satisfied herself that they did not raise an issue of competency.

The testimony of the defendant's expert witnesses at the motion hearing did not alter the landscape. We agree with the motion judge that the experts' testimony did little more than indicate that "some of the defendant's characteristics, as shown by the plea transcript, [were] consistent with mental illness." "The presence or absence of a mental illness is informative on the question of competency, but not dispositive." Commonwealth v. Chatman, 473 Mass. 840, 847 (2016). The record of the plea hearing, whether standing alone or contextualized by the defendant's experts, did not "present a substantial question of possible doubt as to [the defendant's] competency" requiring the

plea judge to order a competency hearing.[2] Commonwealth v. Robidoux, 450 Mass. 144, 153 (2007), quoting Hill, 375 Mass. at 54. Accordingly, we discern no abuse of discretion in the motion judge's denial of the defendant's motion for new trial.

Order denying motion for new trial affirmed.

By the Court (Ditkoff, Walsh & Brennan, JJ.[3]),

Joseph F. Stanton

Clerk

Entered: September 6, 2022.

[2] The defendant asserts that the motion judge erred in his bifurcated analysis of the pleas by miscasting the defense experts' testimony as "new" evidence and finding that it was insufficient to support a showing that "the Commonwealth would not have prevailed had the issue been raised at trial." Chatman, 466 Mass. at 336. Regardless of the standard under which the motion judge considered this evidence, we conclude that the plea judge was not obligated to conduct a sua sponte competency hearing, even in light of the experts' testimony.

[3] The panelists are listed in order of seniority.