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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 11, 2026 9:21 AM
v	No. 371095 Genesee Circuit Court
SWAHITTI KYING WATSON, Defendant-Appellant.	LC No. 2019-045388-FC

Before: WALLACE, P.J., and CAMERON and KOROBKIN, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial convictions of three counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b, three counts of second-degree criminal sexual conduct (CSC-II), MCL 750.520c, and one count of disseminating sexually explicit matter to a minor (DSEM), MCL 722.675. Defendant was sentenced as a second-offense habitual offender, MCL 769.10, to 25 to 50 years' imprisonment for each of the three counts of CSC-I, 12 years to 270 months' imprisonment for each of the three counts of CSC-II, and 18 months to three years' imprisonment for DSEM, with jail credit for 705 days served, and with the three CSC-I sentences to be served consecutively to each other and to the other sentences, and with the CSC-II and DSEM sentences to be served concurrent to each other. We affirm.

I. BACKGROUND

This case arises out of defendant's alleged sexual abuse of two complainants who were both less than 11 years old. Two preliminary examinations were held in the district court. At the first preliminary examination, the first complainant testified that defendant sexually abused her on multiple occasions and that defendant showed her videos of people engaged in sexual acts. The district court bound over defendant on three counts of CSC-I and three counts of CSC-II arising out of defendant's abuse of the first complainant. The lower court record contains a bindover return document which included defendant's case file, register of actions, and defendant's bond information.

After a second complainant came forward with allegations that defendant sexually assaulted her, the circuit court remanded the case to the district court for another preliminary

examination. At the second preliminary examination, the district court took additional testimony from the second complainant and bound over defendant on seven additional counts arising out of defendant's alleged sexual abuse of the second complainant. Two counts of DSEM (one as to each complainant) were later added in an amended felony information.

At a final pretrial hearing on January 30, 2024, defendant asked to address the circuit court. Defendant told the court that his bindover documents had not been filed and given to the clerk's office. He stated that one of his relatives went to the clerk's office to ask for his bindover documents, but the clerk's office had not supplied them.[1] Thus, defendant believed that the trial court lacked jurisdiction over him. The trial court repeatedly explained to defendant that it did, in fact, have defendant's bindover documents in the case file.[2]

The trial court held another pretrial hearing on February 12, 2024, so that the prosecution could place a plea offer on record. During that hearing the prosecutor stated that if defendant was convicted at trial, the prosecutor would request that mandatory 25-year sentences be "stacked," and the trial court agreed that it would have the discretion to do so. Defendant continued to argue that the trial court lacked jurisdiction over him and did not expressly reject the plea offer. However, the trial court considered the plea to be rejected. Defense counsel requested a competency evaluation because he told defendant that "he [was] risking potentially the rest of his life in prison on a document argument that is completely junk," but defendant stated that he did not want to delay the trial any further. The case proceeded to trial.

During deliberation, the jury submitted a question to the trial court. It asked what would happen if the jury was unable to reach a unanimous decision on "one or two" of the charges against defendant. The trial court went on the record to address the jury outside the presence of counsel. It informed the jury that it could render a partial verdict, but it was going to ask the jury to deliberate for about another hour. It then gave an instruction which substantively matched Michigan's standard "deadlocked jury" instruction.[3] It concluded the instruction as follows:

> So again, I'm going to ask you to go back for about an hour, and if at the end of about an hour you decide that the verdict that you have sitting there right now is your verdict, just buzz or knock on the door because we're going to both be out here and we'll proceed with taking what you have, okay?

Over an hour later, the jury reached a verdict. The trial court then called the parties back in, informed them about the question it had answered, and told them what the court said to the jury. The jury found defendant guilty of the seven counts described above as to the first

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[1] Defendant alleged that he was on the phone with this relative at the time she was at the clerk's office, i.e., he suggested that he overheard his relative's conversation with the clerk regarding the bindover documents.

[2] The record suggests that the trial court had defendant's case file in the courtroom at the time of the January 30, 2024 hearing and told defendant, at least twice, that it had the bindover documents "right here."

[3] M Crim JI 3.12.

complainant. The jury found defendant not guilty of four counts of CSC-I as to the second complainant, not guilty of one count of DSEM as to the second complainant, and was unable to reach a verdict as to two counts of CSC-II and one count of CSC-I as to the second complainant.

After sentencing, defendant moved for a new trial on substantively the same grounds he now raises on appeal, which the trial court denied. This appeal followed.

II. ANALYSIS

A. PERSONAL JURISDICTION

Defendant first argues that the trial court erred when it exercised personal jurisdiction over defendant because the district court did not file the required return documents after defendant's preliminary examination, as required by MCR 6.110(G).

Whether a court has personal jurisdiction over a party is a question of law that this Court reviews de novo. *City of Fraser v Almeda Univ*, 314 Mich App 79, 86; 886 NW2d 730 (2016). "Once a preliminary examination is held and the defendant is bound over on any charge, the circuit court obtains jurisdiction over the defendant." *People v Unger*, 278 Mich App 210, 221; 749 NW2d 272 (2008). The Michigan Court Rules provide that "immediately on concluding the [preliminary] examination, the court must certify and transmit to the court before which the defendant is bound to appear the case file, any recognizances received, and a copy of the register of actions." MCR 6.110(G). These documents constitute the "return."

Defendant bears "the burden of furnishing the reviewing court with a record to verify the factual basis of any argument upon which reversal [is] predicated." *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000). In the present case, the record is clear that defendant was properly bound over and the required return documents were furnished to the circuit court. Plaintiff's only support for his claim that a return was not properly filed is his unverified claim that a relative of his was unable to access the records at the clerk's office. However, as previously indicated, the circuit court judge told defendant multiple times on the record that the bindover documents were in his circuit court file. The prosecutor also appended a copy of the bindover sheet for the second preliminary examination to its brief in opposition to defendant's motion for a new trial. Finally, this Court has reviewed the circuit court file, which includes those documents, as required by MCR 6.110(G).

Defendant fails to demonstrate a factual basis for his assertion that a return was not filed for his charges. The record demonstrates that the district court properly transmitted the return documents required by MCR 6.110(G) to the circuit court. Additionally, defendant does not contest the fact that a preliminary examination was held as to each complainant, and that he was, in fact, bound over on those charges. *Unger*, 278 Mich App at 221. Thus, the circuit court did not err when it found that it had personal jurisdiction over defendant.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant next argues that he was denied his constitutional right to the effective assistance of counsel on two separate grounds.

Criminal defendants are entitled to the effective assistance of counsel under the Michigan and United States Constitutions. *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023). To establish ineffective assistance of counsel and obtain a new trial, "a defendant must show (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms and (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *People v Abcumby-Blair*, 335 Mich App 210, 228; 966 NW2d 437 (2020). See also *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984). Counsel is presumed competent, and the defendant "must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.* at 689 (quotation marks and citation omitted). "However, counsel's strategic decisions must be objectively reasonable." *Yeager*, 511 Mich at 488. Further, "[f]ailing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel." *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

Whether a defendant has been deprived of the effective assistance of counsel presents a mixed question of fact and constitutional law. *People v Trakhtenberg*, 493 Mich 38, 47; 826 NW2d 136 (2012). The reviewing court "must first find the facts and then must decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel." *People v Riley*, 468 Mich 135, 139; 659 NW2d 611 (2003).

1. ADMINISTRATIVE COMMUNICATION WITH JURY

Defendant first argues that his trial counsel was ineffective because his trial counsel failed to object to the trial court's administrative communication with the jury outside the presence of counsel.

Communications between the trial court and a deliberating jury are not grounds for automatic reversal absent a showing of "any reasonable possibility of prejudice" to the defendant. *People v France*, 436 Mich 138, 142; 461 NW2d 621 (1990). In *France*, our Supreme Court provided the following guidance for evaluating whether such a communication is reversible error:

> We find that communication with a deliberating jury can be classified into one of three categories: substantive, administrative, or housekeeping. Upon appeal, it is incumbent upon a reviewing court to first categorize the communication that is the basis of the appeal. This will necessarily lead to the determination of whether a party has demonstrated that the communication was prejudicial, or that the communication lacked any reasonable prejudicial effect.
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> Administrative communications include instructions regarding the availability of certain pieces of evidence and instructions that encourage a jury to continue its deliberations. An administrative communication carries no presumption. The failure to object when made aware of the communication will be taken as evidence that the administrative instruction was not prejudicial. Upon an objection, the burden of persuasion lies with the nonobjecting party to demonstrate that the communication lacked any prejudicial effect. Alternatively, a reviewing

> court, upon its own volition, may find that an instruction which encourages a jury to continue its deliberations was prejudicial to the defendant because it violated the ABA Standard Jury Instruction 5.4(b), as adopted by this Court in *People v Sullivan*, 392 Mich 324; 220 NW2d 441 (1974). [*Id*. at 142-144.]

In this case, the trial court's communication with the jury was plainly administrative. In response to a question from the jury about what would happen if it were unable to reach a verdict on some of the counts, the trial court gave the standard deadlocked-jury instruction[4] and encouraged the jury to continue its deliberations for about another hour, after which it would accept the result. Contrary to defendant's assertion on appeal, this communication was not coercive toward the jury and did not "pressure" the jury to reach a verdict within 60 minutes. Defendant's contention that "the trial court did not provide the [j]ury with instruction on how to resolve an impasse" and "failed to remind the jurors to not give up on their honestly held beliefs just to reach an agreement" is also unsupported by the record because the trial court clearly gave those instructions. The trial court said that it would accept the jury's verdict or failure to reach a verdict after it deliberated for about another hour. Indeed, the trial court accepted the jury's verdict and the jury's failure to reach a verdict on several counts.[5]

Because the trial court's administrative communication with the jury was not prejudicial, any objection to the communication would have been futile. Trial counsel is not ineffective for failing to raise a futile objection. *Ericksen*, 288 Mich App at 201. Thus, defendant's trial counsel was not ineffective on this ground.

2. CONSECUTIVE SENTENCING

Defendant next argues that his trial counsel was ineffective because his trial counsel allegedly failed to inform defendant of the possibility of consecutive sentencing if defendant rejected the prosecutor's plea offer and went to trial.

Defendants are "entitled to the effective assistance of counsel in the plea-bargaining process." *People v Douglas*, 496 Mich 557, 591-592; 852 NW2d 587 (2014). Regarding the first prong of the test for ineffective assistance of counsel, counsel has a "critical obligation . . . to advise the client of the advantages and disadvantages of a plea agreement." *Padilla v Kentucky*, 559 US 356, 370; 130 S Ct 1473; 176 L Ed 2d 284 (2010) (quotation marks and citation omitted). In this case, there is no evidence in the record as to whether defendant's trial counsel specifically told defendant that he could be subject to discretionary consecutive sentencing if he went to trial. Defendant's trial counsel informed the trial court that it had discussed the offer with defendant, but the specific contents of that discussion are not available.

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[4] M Crim JI 3.12.

[5] Rather than pressure the jury to reach a verdict, it can be said that the trial court actually relieved the jury of any such pressure by telling the jury that the court would accept its decision after merely another hour of deliberation.

But even to the extent that defendant was not informed by trial counsel of the possibility of consecutive sentencing if defendant went to trial, there is no evidence that defendant was prejudiced by that allegedly deficient performance. To demonstrate prejudice from trial counsel's deficient performance which resulted in the rejection of a plea offer,

> a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. [*Lafler v Cooper*, 566 US 156, 164; 132 S Ct 1376; 182 L Ed 2d 398 (2012).]

In this case, it is plain that defendant's sentence under the offered plea agreement would have been less severe than the possible sentence if he was found guilty at trial, assuming the trial court actually accepted the plea. However, there was no reasonable probability that defendant would have accepted the plea offer. Defendant was not only made aware of the possibility of consecutive sentencing by the trial court at the February 12, 2024 hearing, the trial court stated on the record that it would be within its discretion to "stack" defendant's sentences if he were found guilty at trial. Likewise, the prosecution stated on the record that, if defendant was convicted by a jury, it would be asking the court to stack "every single" count with a mandatory 25-year minimum sentence and that "all of the facts that would come out at trial would give Your Honor the jurisdiction and authority to do so." Defendant nonetheless chose to reject the plea offer and go to trial.

Thus, because defendant chose to reject the plea offer and go to trial, even after being told that it would be within the trial court's discretion to "stack" his sentences, even after the prosecution stated that it would seek such a sentence, and even after defendant was told that he was risking being subjected to what would effectively be a life sentence by going to trial, there was no reasonable probability that defendant's trial counsel's alleged failure to inform defendant of the possibility of consecutive sentencing would have led defendant to accept the plea offer. Accordingly, defendant was not denied his constitutional right to the effective assistance of counsel in this instance.

C. MOTION FOR NEW TRIAL

Defendant next argues that the trial court abused its discretion when it denied defendant's motion for a new trial or, in the alternative, a *Ginther*[6] hearing to further develop the record because defendant was entitled to appellate relief on the foregoing grounds and because the outcome of defendant's trial constituted a miscarriage of justice.

"We review a trial court's decision on a motion for new trial for an abuse of discretion." *People v Loew*, 514 Mich 158, 173; 22 NW3d 323 (2024). "A trial court abuses its discretion

[6] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

when its decision falls outside the range of reasonable and principled outcomes or when it makes an error of law." *People v Kejbou*, 348 Mich App 467, 471-472; 19 NW3d 393 (2023) (quotation marks, citation, and brackets omitted).

MCR 6.431(B) provides the following regarding motions for a new trial in a criminal case:

> On the defendant's motion, the court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice. The court must state its reasons for granting or denying a new trial orally on the record or in a written ruling made a part of the record.

MCL 769.26 similarly provides the following:

> No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice.

Further, "a nonconstitutional error results in a miscarriage of justice only if a nonconstitutional error had an effect on the finder of fact to the defendant's detriment." *Loew*, 514 Mich at181.

In this case, as discussed above, there were no grounds that would have supported appellate reversal of defendant's convictions. Defendant's trial counsel was not constitutionally ineffective, the trial court had personal jurisdiction over defendant, and the trial court's administrative communication with the jury without the presence of counsel did not prejudice defendant. Further, none of the conduct of which defendant complains resulted in a miscarriage of justice because none of defendant's arguments demonstrate any error by the trial court. Thus, the trial court's decision to deny defendant's motion for a new trial was not an abuse of discretion.

Defendant argues in the alternative that he should be granted a *Ginther* hearing on the issue of ineffective assistance of counsel. However, a defendant is not entitled to a *Ginther* hearing if that defendant fails to "demonstrate[] any issue for which further factual development would advance his claim." *People v Chapo*, 283 Mich App 360, 369; 770 NW2d 68 (2009). That is the case here. Defendant's first alleged instance of ineffective assistance of counsel would not be supported by further factual development because any objection to the trial court's administrative communication with the jury by defendant's trial counsel would have been futile. As to defendant's second alleged instance of ineffective assistance of counsel, as noted, defendant was informed on the record that he could be subject to consecutive sentencing if he rejected the plea offer and he chose to reject the offer anyway. Thus, even if defendant's trial counsel failed to inform defendant of the possibility of consecutive sentencing, defendant's claim would still fail on

the second prong of the *Strickland* analysis because there was no reasonable probability that the result of the plea-bargaining process would have been different. Accordingly, defendant was not entitled to a *Ginther* hearing.

Affirmed.

/s/ Randy J. Wallace
/s/ Thomas C. Cameron
/s/ Daniel S. Korobkin