

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED
September 16, 2021

Plaintiff-Appellee,

v

No. 352179
Clare Circuit Court
LC No. 16-005457-FC

JAMES BRYAN KUHNS,

Defendant-Appellant.

Before: MURRAY, C.J., and M. J. KELLY and O’BRIEN, JJ.

PER CURIAM.

Defendant, James Kuhns, pleaded guilty to open murder and was convicted, following a degree hearing, MCL 750.318, of first-degree murder, MCL 750.316(1)(a). This Court denied Kuhns’s delayed application for leave to appeal, but our Supreme Court remanded to us for consideration as on leave granted.¹ Because there are no errors warranting relief, we affirm.

I. BASIC FACTS

In April 2016, Kuhns killed Leonard Hempel. Approximately a month later, some of Hempel’s friends found what appeared to be human remains at Hempel’s house. The police executed a search warrant and discovered Hempel’s body buried in the garden behind his house. Kuhns was arrested for the murder and made a number of inculpatory statements to the police. In a prior appeal, this Court affirmed the trial court order that the inculpatory statements would be admissible at trial.²

Relevant to the issues raised on appeal, in May 2017, the parties stipulated to a forensic examination concerning Kuhns’s competency. Thereafter, his competency was evaluated in July 2017. The competency report noted that Kuhns did not display any bizarre mannerisms and there

¹ *People v Kuhns*, 506 Mich 923 (2020).

² *People v Kuhns*, unpublished per curiam opinion of the Michigan Court of Appeals, issued May 15, 2018 (Docket No. 340828), p 1.

was no indication that he was experiencing symptoms of a thought disorder at the interview. The author of the competency report opined that Kuhns was competent to stand trial because Kuhns understood how the court worked, his defense options, and the possible outcomes. The competency report also noted that Kuhns was of at least average intelligence, articulate, and legally knowledgeable. In August 2017, the trial court held a hearing to determine Kuhns's competency, adopted the findings of the competency report, and found that Kuhns was competent to stand trial.

Kuhn's plea hearing was held in June 2018, which was almost a year after his competency evaluation.³ Kuhns pleaded guilty to open murder. After the trial court advised him of his rights, Kuhns testified that he understood everything that the trial court told him and that it was his choice to plead guilty. In August 2019, Kuhns filed a motion to withdraw his plea, for a "re-referral" to the center of forensic psychiatry for a competency evaluation, and for an evidentiary hearing. He attached an offer of proof that included statements of his appellate lawyer and both of his trial lawyers, Louis Willford and Dwight Carpenter. His lawyers expressed concern regarding Kuhns's declining mental health. The offer of proof also indicated that the warden's administrative assistant at the Gus Garrison Correctional Facility confirmed that Kuhns was placed in the Crisis Stabilization Unit and Acute Care Unit at the Woodland Center Correctional Facility from February 10, 2019 to March 22, 2019. The warden's administrative assistant also stated that Kuhns was placed in a residential treatment unit at the Gus Garrison Correctional Facility. In addition, a letter sent in March 2019 from Kuhns to Willford was attached to the offer of proof. In the letter, Kuhns asserted that he was remote controlled in the courtroom and that he did not understand his guilty plea.

The trial court denied the motions. The court reasoned that the competency evaluation was the best evidence of defendant's competency to stand trial, and it noted that it previously found Kuhns competent to stand trial. The trial court acknowledged that there was a significant amount of time between the competency hearing and the plea hearing, but stated that was not enough evidence that Kuhns was incompetent at his plea hearing.

II. SECOND REFERRAL FOR COMPETENCY

A. STANDARD OF REVIEW

Kuhns argues that the trial court erred by denying his request for a second referral for a competency evaluation. We review for an abuse of discretion a trial court's decision to inquire into a defendant's competence. *People v Kammeraad*, 307 Mich App 98, 138; 858 NW2d 490 (2014). A trial court abuses its discretion when its "decision is outside the range of reasonable and principled outcomes." *Id.* at 140 (quotation marks and citation omitted).

B. ANALYSIS

³ The delay between the court's finding that Kuhns was competent to stand trial and when Kuhns pleaded guilty was due to the court granting a stay of the proceedings pending the resolution of Kuhns's prior appeal to this Court.

A defendant must be competent at the time of the trial. *People v McSwain*, 259 Mich App 654, 692; 676 NW2d 236 (2003); MCL 330.2022(1).⁴ The competence to plead guilty is the same as competence to stand trial. *People v Matheson*, 70 Mich App 172, 181; 245 NW2d 551 (1976).⁵ The issue of a defendant's competency to "stand trial or to participate in other criminal proceedings may be raised at any time during the proceedings against the defendant," and it may be raised by the court or by a party. MCR 6.125(B). "The issue of competence can only be raised by evidence of incompetence." *People v Blocker*, 393 Mich 501, 508; 227 NW2d 767 (1975). Under MCR 6.125(C)(1):

On a showing that the defendant may be incompetent to stand trial, the court must order the defendant to undergo an examination by a certified or licensed examiner of the center for forensic psychiatry or other facility officially certified by the department of mental health to perform examinations relating to the issue of competence to stand trial.

The determination whether a defendant is competent to stand trial is within the trial court's discretion. *Kammeraad*, 307 Mich App at 138. However, a trial court has a duty to raise the issue of incompetence when "facts are brought to its attention which raise a 'bona fide doubt' as to the defendant's competence." *Id.* (quotation marks and citation omitted). The test for "bona fide doubt" is "whether a reasonable judge, situated as was the trial court judge whose failure to conduct an evidentiary hearing is being reviewed, should have experienced doubt with respect to competency to [plead guilty]." *Id.* at 138-139 (quotation marks and citation omitted). "Evidence of a defendant's irrational behavior, a defendant's demeanor, and a defendant's prior medical record relative to competence are all relevant in determining whether further inquiry in regard to competency is required." *Id.* at 139.

Kuhns argues that he presented sufficient evidence of his incompetence to entitle him to a second referral for a competency evaluation. Again, a defendant must be competent when he or she pleads guilty. *McSwain*, 259 Mich App at 692. Thus, to prevail, Kuhns must provide evidence that established that he was incompetent *when he pleaded guilty* to open murder. On appeal, he directs this Court to the statements his trial lawyers made to his appellate lawyer. Willford

⁴ MCL 330.2020(1) provides:

A defendant to a criminal charge shall be presumed competent to stand trial. He shall be determined incompetent to stand trial only if he is incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner. The court shall determine the capacity of a defendant to assist in his defense by his ability to perform the tasks reasonably necessary for him to perform in the preparation of his defense and during his trial.

⁵ While published opinions of this Court decided before November 1, 1990, are not binding, MCR 7.215(J)(1), "they are nevertheless precedential, MCR 7.215(C)(2), and they are thus afforded significantly more deference than would be given to unpublished cases." *People v Spaulding*, 332 Mich App 638, 657 n 5; 957 NW2d 843 (2020).

expressed concern about Kuhns's mental health, but did not state that Kuhns was not competent to stand trial at the time of the plea hearing. Unlike Willford, there is some evidence that Carpenter thought about requesting another referral for a competency evaluation. According to the offer of proof, Carpenter's secretary stated that Carpenter believed that he talked to the prosecutor about a second referral, but the prosecutor stated that she would object. A court is not required to "accept without question a lawyer's representations concerning the competence of his client," but "an expressed doubt in that regard by one with the closest contact with the defendant, is unquestionably a factor which should be considered." *Drope v Missouri*, 420 US 162, 177 n 13; 95 S Ct 896, 907; 43 L Ed 2d 103 (1975) (quotation marks and citations omitted). In addition, the prosecutor stated that she could not recall either lawyer seeking a second referral, and that she would not have objected if the request was made. Further, there is no indication in the offer of proof when Carpenter believed he asked for a second referral. Thus, Carpenter's statements do not provide evidence that Kuhns was incompetent when the plea hearing occurred.

Likewise, the letter Kuhns wrote to Willford demonstrates that he believed that he was subjected to mind control and was experimented on while in the county jail. However, the letter was sent in March 2019, and there is no evidence in the record that Kuhns held those beliefs when he pleaded guilty. In addition, although Kuhns made some statements in the letter that indicated that he did not understand the circumstances of the plea hearing, he *testified at the plea hearing* that he understood everything that the trial court told him. There is no indication that Kuhns exhibited bizarre behavior at the plea hearing. Kuhns also stated in his letter that he was remotely controlled when he pleaded guilty, but at the plea hearing the trial court asked him whether he was threatened in order to force him to plead guilty and Kuhns testified that it was his choice to plead guilty.

Kuhns also argues that the offer of proof also included his appellate lawyer's observations of Kuhns and an explanation of his placement with the Woodland Center Correctional Facility and a residential treatment unit at the Gus Garrison Correctional Facility. However, his appellate lawyer expressed concern about Kuhns's mental health after a video conference in July 2019, more than a year after the plea hearing occurred. Similarly, Kuhns was placed at the Woodland Center Correctional Facility from February 2019 to March 2019, which was months after the plea hearing. Consequently, those facts do not establish that Kuhns was incompetent when he pleaded guilty.

In summary, because Kuhns has not provided any evidence that he was incompetent *during his plea hearing*, he has not overcome the presumption that he was competent to plead guilty. See MCL 330.2020(1). The trial court did not abuse its discretion by denying Kuhns's request for a second referral for a competency evaluation.

II. INEFFECTIVE ASSISTANCE

Kuhns argues that his trial lawyers were ineffective because they failed to request a second referral for competency before the plea hearing. However, as previously explained, Kuhns has not established that he should have been given a second competency evaluation. "Failing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel." *People v Erickson*, 288 Mich App 192, 201; 793 NW2d 120 (2010). Therefore, Kuhns cannot prove that his trial lawyers' performance was deficient.

Moreover, the trial court did not err by denying Kuhns's request for an evidentiary hearing on the issue of ineffective assistance. Kuhns's claim of ineffective assistance relied on facts included in the record, so no evidentiary hearing was required. See *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973) (noting that an evidentiary hearing is appropriate when a defendant's ineffective-assistance claim depends on facts that are not in the record).

III. MOTION TO WITHDRAW PLEA

Kuhns also contends that the trial court erred by denying his motion to withdraw his guilty plea. MCR 6.310(C) governs motions to withdraw a plea after sentencing. MCR 6.310(C)(3) provides, in relevant part:

If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea.

Kuhns argues that there was an error in the plea-taking process because his plea was not understanding or voluntary due to his incompetence. However, as discussed above, Kuhns has not provided sufficient evidence that he was incompetent when he pleaded guilty. Further, the trial court substantially complied with MCR 6.302, which outlines the requirements for a court to accept a guilty plea, to determine that Kuhns's plea was knowing, understanding, and voluntary.

Nevertheless, Kuhns argues that his plea was not voluntary because a significant amount of "prodding" was needed for him to make a factual basis for the plea. The plea transcript does not reveal a significant amount of prodding by his trial lawyer or the trial court at the plea hearing. There were two instances when his lawyer discussed Kuhns's answers because it appeared as if Kuhns did not fully understand the legal requirements of self-defense or defense of others. After those conversations with his lawyer, Kuhns subsequently testified that he was not acting in legal self-defense or to defend others. Further, the trial court explicitly asked Kuhns whether it was his own choice to plead guilty, and Kuhns responded, "Yes, Your Honor." Because the trial court substantially complied with the procedures set forth in MCR 6.302 and confirmed that Kuhns understood the contents of MCR 6.302(B)(1) through (B)(5), and that Kuhns's plea was understanding and voluntary, there was no error in the plea-taking process. The trial court, therefore, did not abuse its discretion by denying his motion to withdraw his plea.

Affirmed.

/s/ Christopher M. Murray
/s/ Michael J. Kelly
/s/ Colleen A. O'Brien