

Court of Appeals, State of Michigan

ORDER

People of MI v Phillip McKenzie Payne

Docket No. 314563

LC No. 12-003654-FC

Michael J. Riordan
Presiding Judge

Kurtis T. Wilder

Karen M. Fort Hood
Judges

The Court orders that the motion to remand pursuant to MCR 7.211(C)(1) is DENIED.

Although defendant-appellant has supported his motion to remand with affidavits or offers of proof, he has failed to show that he can overcome the presumption that his attorney engaged in sound trial strategy by presenting an insanity defense rather than relying on alibi, duress, or self-defense. Defendant-appellant has not shown that the proposed testimony of Jessie Meyers would have aided the insanity defense and he has therefore not shown that his counsel was ineffective in not interviewing or calling Meyers as a witness.

Defendant-appellant has not shown that his attorney engaged in an unsound trial strategy by examining the prosecution's expert witness about defendant-appellant's condition at the time of his arrest at trial instead of exploring that issue with the expert witness before trial. Defendant-appellant has failed to show that the limited meetings with his attorney to prepare for trial affected his insanity defense or the outcome of the trial.

Defendant-appellant has not made a proper offer of proof related to the rejection of a plea deal from the prosecutor to establish the terms of any deal actually offered and why it was rejected. While defendant-appellant argues that he was advised by his attorney that he should reject a plea offer because he could prevail at trial, if defendant-appellant was offered a plea deal, he has not shown that his attorney failed to properly advise him of the consequences of rejecting any plea offer and trying this case, or that defendant-appellant did not make the decision to reject the plea offer himself after he was fully informed of the consequences.

Defendant-appellant has also not properly shown that the record should be further developed because his trial attorney was ineffective with regard to a video recording of the incident.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JAN 14 2014

Date


Chief Clerk