

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMUEL PAUL PEARSON,

Defendant-Appellant.

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UNPUBLISHED

May 28, 1996

No. 179808

LC No. 94-130950

Before: Taylor, P.J., and Murphy and E. J. Grant,\* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to murder, MCL 750.83; MSA 28.278, and was subsequently sentenced to life imprisonment. He appeals as of right and we affirm.

On October 20, 1985 defendant climbed a ladder, entered through an upstairs window, and brutally beat his wife's head with a hammer while she was sleeping. Charges were not filed against defendant until several years later, when he discussed the details of the crime with others. He raises several issues on appeal, none of which require reversal.

First, defendant contends that he was denied effective assistance of counsel. To establish a claim of ineffective assistance of counsel, the defendant must show that his counsel's performance at trial fell below an objective standard of reasonableness and that the performance so prejudiced his case that he was denied the right to a fair trial. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994). Defendant argues that counsel's failure to ask jurors whether they would hold against him his failure to testify requires reversal. We disagree. While it is possible for defense counsel's performance during voir dire to constitute ineffective assistance of counsel, *People v Johnson*, 424 Mich 902; 384 NW2d 21 (1986), such was not the case here. Even if we were persuaded that counsel's failure to question the jurors in this regard fell below an objective standard of reasonableness, we would find no prejudice. Before trial, the jurors were instructed that defendant was presumed innocent. Furthermore,

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\* Circuit judge, sitting on the Court of Appeals by assignment.

immediately before deliberations, the court instructed that “every defendant has the absolute right not to testify” and that the failure to testify “must not affect your verdict in any way.” Since defendant points to no evidence suggesting that the jurors ignored the court’s instructions, we find no prejudice in counsel’s failure to ask the jurors if they would hold his failure to testify against him. Therefore, defendant has failed to establish that he was denied effective assistance of counsel. *People v LaVearn*, 448 Mich 207, 217; 528 NW2d 721 (1995).

Defendant also argues that the court erred in instructing the jury regarding the intent required to convict him of assault with intent to murder. The elements of the crime of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995). Defendant contends that *People v Taylor*, 422 Mich 554; 375 NW2d 1 (1985), required the court to instruct the jury, as he requested, that it was not enough that he intended to inflict great bodily harm or that he assaulted the victim with wanton and willful disregard such that death or harm would result. We disagree. Jury instructions are reviewed in their entirety to determine if reversal is required. *People v Moldenhauer*, 210 Mich App 158, 159; 533 NW2d 98 (1995). In this case, the court instructed the jury that in order to convict defendant, it must find that defendant intended to kill the person he assaulted. Read as a whole, this instruction adequately relayed the law the jurors were to apply. A criminal jury instruction need not contain the types of intent that will not suffice to support conviction. Rather, all that is required is an instruction that articulates each element, including the intent that will support a conviction. *People v Edwards*, 206 Mich App 694, 696; 522 NW2d 727 (1994). Because the court’s instruction conveyed the applicable intent required to convict, we find no error.

Defendant next argues that the trial court erred when it allowed a witness to testify that, when first seeing the victim, the witness thought the victim was dead and that her main concern at the time was for the children of the victim and defendant. Although defendant objected at trial, he failed to state the specific grounds for his objection. We therefore decline to address this issue. MRE 103(a)(1); *In re Forfeiture of \$19,250*, 209 Mich App 20, 31; 530 NW2d 759 (1995). The admission of this evidence did not produce a miscarriage of justice. *People v Grant*, 445 Mich 535, 544-545; 520 NW2d 123 (1994).

Defendant also challenges the correctness of his sentence. First, he contends that the trial court improperly scored Offense Variable 1. However, since defendant failed to object to this score at sentencing or as otherwise allowed by MCR 6.429(C), this issue is not properly preserved for our review and we decline to address it. *People v Eaves*, 203 Mich App 356, 358; 512 NW2d 1 (1994).

Next, defendant argues that his sentence violates the principle of proportionality. Our review of this issue is limited to whether the trial court abused its discretion in imposing the sentence. *People v Merriweather*, 447 Mich 799, 805-806; 527 NW2d 460 (1994). A trial court abuses its discretion when it imposes a sentence that is not reflective of the seriousness of the matter. *People v Houston*, 448 Mich 312, 319; 532 NW2d 508 (1995). Defendant contends that the trial court abused its discretion when sentencing him to life imprisonment when the guidelines’ recommendation was 96 to

180 months. We disagree. A trial court may depart from the guidelines when the defendant's actions are so egregious that they do not adequately address important factors that may be considered at sentencing. *People v Granderson*, 212 Mich App 673, 680; 538 NW2d 471 (1995); *People v Coulter*, 205 Mich App 453, 456; 517 NW2d 827 (1994). Here, the evidence revealed that defendant viciously attacked his sleeping wife with a hammer and then bragged about it years later to others. The trial court recognized this extreme brutality when sentencing defendant and we find no abuse of discretion.

Defendant also contends that the trial court improperly considered certain factors when departing from the guidelines. First, he argues that the trial court improperly considered the location of the assault. However, since defendant has provided no authority for the proposition that this consideration is impermissible, his argument is without merit. Secondly, he argues that the court improperly characterized his attitude at sentencing as unremorseful. We disagree. As mentioned, defendant bragged to several persons that he committed the crime and told one witness that if given the opportunity, he would do it again. We find this evidence to be indicative of defendant's lack of remorse, a factor which the trial court was entitled to consider. *Houston, supra* at 323. Lastly, defendant contends that the trial court improperly characterized him as an extreme danger to the community. As with the last factor, the trial court was permitted to consider defendant's dangerousness. *People v Wichter*, 192 Mich App 307, 309-310; 480 NW2d 636 (1991). A person is dangerous to the community when he beats his spouse's head with a hammer and later wishes for an opportunity to do it again.

Finally, defendant contends that the evidence was insufficient to support his conviction. When determining whether sufficient evidence was presented to establish the elements of a conviction, we review the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Defendant contends that the evidence was insufficient with regard to the element that he intended to kill the victim. We disagree. Defendant confessed to committing the crime to no fewer than five persons. Furthermore, testimony revealing that defendant used a hammer, coupled with the nature and extent of the victim's injuries as revealed by the treating physician, when viewed in a light most favorable to the prosecution, sufficiently shows that a rational trier of fact could have found that defendant possessed the requisite intent to murder on the evening of the assault.

Affirmed.

/s/ Clifford W. Taylor

/s/ William B. Murphy

/s/ Edward J. Grant