

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY WILLIAM WRIGHT,

Defendant-Appellant.

UNPUBLISHED

April 1, 1997

No. 185863

Oakland Circuit Court

LC No. 94-135697

Before: Wahls, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of assault with intent to murder, MCL 750.83; MSA 28.278, two counts of armed robbery, MCL 750.529; MSA 28.797, kidnapping, MCL 750.349; MSA 28.581, unlawfully driving away an automobile (UDAA), MCL 750.413; MSA 28.645, carrying a concealed weapon (CCW), MCL 750.227; MSA 28.424, being a felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), and five counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was then found by the court to be an habitual offender, third offense, MCL 769.11; MSA 28.1083. He was sentenced to terms of sixty to ninety years for the assault conviction, two life sentences for the armed robbery convictions, life for the kidnapping conviction, three to five years for the UDAA conviction, three to five years for the felon in possession conviction, and three to five years for the CCW conviction. Each of these sentences was vacated, and defendant was sentenced to concurrent terms of sixty to ninety years' imprisonment and five to ten years' imprisonment, to be served consecutively to a two-year sentence on each of the felony-firearm convictions. He appeals as of right. We affirm.

Gregory Gryczon testified that on June 28, 1995, at approximately 8:35 p.m., he was exiting Sam's Club store in Madison Heights. As he approached his vehicle, he saw defendant sitting in the passenger seat of an adjacent vehicle. According to Gryczon, as he opened his door, defendant approached him, pointed a gun at his chest and demanded his vehicle and his wallet. Defendant did not take his wallet because Gryczon said that there was no money in it. Defendant then drove off in the vehicle, and Gryczon returned to the store to call the police.

Royal Oak Police Officer Dana Welch testified that at approximately 8:45 p.m., he was dispatched to investigate a carjacking at Sam's Club. As he proceeded to an entrance ramp to southbound I-75, he saw a vehicle matching the description of the stolen vehicle moving at a high rate of speed. According to Welch, he was in radio contact with Police Officer Christopher Jahnke. Welch pursued the car and determined from the license plate that it was the stolen vehicle. Jahnke joined the pursuit and they attempted, unsuccessfully, to box in the vehicle. The stolen vehicle then rammed Jahnke's vehicle. Jahnke testified that when the stolen vehicle became adjacent to his car, the driver pulled out a gun and fired two shots. After being shot, Jahnke pulled over while Welch continued the pursuit. Welch testified that the stolen vehicle exited at Eight Mile Road and turned into a subdivision. Welch lost the vehicle at that point.

Jeanette Godfrey¹ testified that, at approximately 9:00 p.m., she pulled into her driveway in Palmer Woods in Detroit and saw defendant standing outside her vehicle holding a gun. Defendant entered the driver's door, crawled over Godfrey, sat in the passenger seat, and ordered her to drive him to I-75 and Davison. Godfrey testified that defendant told her that he "had just shot some cops near Oakland Mall." After Godfrey drove defendant around Detroit for twenty to twenty-five minutes, defendant allowed her to leave the car.

Claude Huffman, the boyfriend of defendant's cousin, testified that, sometime in the late evening, defendant unexpectedly appeared at his house beating on the door and demanding to be let in because he "had just shot the police." Hoffman refused and defendant left.

Detroit Police Officer Thomas C. Berry testified that, on June 29, 1994, he and his partner observed defendant and attempted to arrest him. Berry indicated that, as he reached for defendant's left hand to cuff him, defendant began to turn around and he noticed that defendant had a .45 caliber gun in the waistband of his shorts. Defendant attempted to pull his gun on the officers. They struggled and Berry hit defendant on the head with his gun. Ultimately, defendant was arrested after two additional officers arrived.

Defendant first argues that the trial court abused its discretion by failing to *sua sponte* order a hearing to evaluate his competence to stand trial after observing his demeanor at trial. We disagree. We review a trial court's decision on the question of a defendant's competency to stand trial for an abuse of discretion. *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990).

A criminal defendant is presumed competent to stand trial absent a showing that "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." MCL 330.2020(1); MSA 14.800(1020)(1). Although the determination of a defendant's competence is within the trial court's discretion, a trial court has the duty of raising the issue of incompetence where facts are brought to its attention which raise a "bona fide doubt" as to the defendant's competence. *Harris, supra*.

Having reviewed the record, we conclude that it supports the trial court's conclusion that defendant was competent to stand trial. Prior to trial, the court held a hearing on defendant's competence to stand trial. During the hearing, an expert witness testified that defendant feigned his symptoms, and provided a detailed explanation for this conclusion. Defendant failed to offer any plausible argument as to why or how the expert's opinions were flawed.

Furthermore, defendant's reliance on *Harris, supra*, is misplaced as that case is distinguishable from the instant case. Most obviously, the instant case involved extensive expert testimony that

defendant faked his symptoms. Defendant has failed to offer any argument that the trial court's acceptance of the expert's testimony was an abuse of discretion MRE 702. The trial court had discretion to conclude that defendant's symptoms were fake, and was not obligated to order another competency hearing.

Moreover, defendant's conduct while acting as his own attorney demonstrates that defendant was competent to stand trial. Defendant asserted at least five successful objections at trial, citing appropriate grounds for each. Defendant was also able to cross-examine prosecution witnesses with prior inconsistent statements and, on at least three occasions, was able to modify his questions in response to the prosecutor's objections. Finally, at the close of the evidence, defendant brought a motion for directed verdict, articulating specific arguments with respect to each charge. We find that this conduct demonstrates that defendant was capable of "understanding the nature and object of the proceedings against him." The trial court did not abuse its discretion by failing to order a competency hearing *sua sponte*.

Defendant also argues that the trial court abused its discretion by granting his motion to proceed *pro se* and by failing to reverse that decision after seeing his behavior at trial. Again, we disagree. We review a trial court's decision on the question of a defendant's competency to proceed *pro se* for an abuse of discretion. *People v Holcomb*, 47 Mich App 573, 581; 209 NW 2d 701 (1973), rev'd on other grounds 395 Mich 326; 235 NW2d 343 (1975).

A criminal defendant's right to proceed *in propria persona* is guaranteed by the Michigan Const 1963, art 1, § 13 and by MCL 763.1; MSA 28.854, and implicitly by the Sixth Amendment, US Const, Am VI. This right, however, is not absolute. Three requirements must be satisfied before a defendant's request to dismiss his counsel and proceed *pro se* is granted. *People v Anderson*, 398 Mich 361 367; 247 NW2d 857 (1976). First, the defendant's request must be unequivocal. *Id.* at 367. Second, the defendant must assert his right to self-representation knowingly, intelligently, and voluntarily. In assuring a knowing and voluntary waiver, the trial court must make the defendant aware of "the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open." *Id.* at 367-368. Third, the court must establish that the defendant will not unduly disrupt the court while acting as his own counsel. *Id.* at 368.

In addition to the aforementioned substantive requirements, a trial court must also comply with MCR 6.005(D) with respect to a defendant considering self-representation. *People v Adkins*, 452 Mich 702, 722; 551 NW2d 108 (1996). Accordingly, pursuant to MCR 6.005, the court is required to inform the defendant of the risks of self-representation, offer the assistance of an attorney and advise the defendant about the possible punishment for the charged offenses. *Id.*

In this case, defendant's waiver of right to counsel was valid. Defendant unequivocally indicated, no less than five times, his desire to represent himself. Defendant indicated that he had "[n]o doubt in [his] mind" that he was "sure" that he wanted to represent himself. The court explained the hazards of self-representation. In fact, the court instructed defendant to think about his request over the lunch hour. The court explained that, in representing himself, he would be unable to match the education and experience of the prosecutor. The court even stated that, "[i]t is very dangerous for people to represent themselves. Even lawyers are warned, 'Don't try to represent yourself.'" Defendant acknowledged that he knew what his waiver signified. The court allowed defense counsel to serve as standby counsel, instructed defense counsel to sit at the table with defendant, and told defendant that he

was free to consult with defense counsel at any time. The court also explained the charges against defendant and the possible minimum and mandatory sentences. Finally, the court determined that that defendant would abide by rules of courtroom.

Furthermore, as previously discussed, defendant's conduct while acting as his own attorney demonstrates that he knew what "he was doing." Again, defendant asserted at least five successful objections at trial, effectively cross-examined prosecution witnesses with prior inconsistent statements and, at the close of the evidence, brought a motion for directed verdict, articulating specific arguments with respect to each charge. The trial court did not abuse its discretion by granting defendant's motion to proceed *pro se* and by failing to reverse that decision after observing his behavior at trial

Defendant next argues that his conviction for being a felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), violates the Ex Post Facto Clauses of the Michigan and United States Constitutions. Specifically, defendant claims that, because the statute was not in effect when he was convicted of the crimes which gave him "felon" status, his conviction is ex post facto. We disagree. Whether a statute's application is ex post facto is a question of law reviewed de novo. See *Riley v Michigan Parole Bd*, 216 Mich App 242; 548 NW2d 686 (1996).

A statute which affects the prosecution or disposition of criminal cases involving crimes committed prior to the effective date of the statute violates the Ex Post Facto Clauses if it 1) makes punishable that which was not, 2) makes an act a more serious criminal offense, 3) increases the punishment for the crime, or 4) allows the prosecution to convict on less evidence. *Id.* at 244.

This Court explicitly addressed the exact argument asserted by defendant in *People v Tice*, 220 Mich App 47; ___ NW2d ___ (1996). The *Tice* Court ruled that, because the protection of public safety is a valid exercise of the police power, application of MCL 750.224f; MSA 28.421(6) to convicted felons, based on a felony committed prior to the effective date of the statute, does not violate the Ex Post Facto Clauses of the United States and Michigan Constitutions. *Id.* at 52. This issue is, therefore, without merit.

Defendant finally argues that his habitual offender sentences are disproportionate to the offense and the offender. We disagree. This Court's review of an habitual offender sentence is limited to considering whether the sentence violates the principle of proportionality. *People v Gatewood (On Rem)*, 216 Mich App 559, 560; 550 NW2d 265 (1996). The principle of proportionality requires that the sentence imposed be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).²

The circumstances surrounding this offense were serious. Defendant essentially orchestrated a crime spree, during which he shot a police officer, abducted a woman from her driveway and robbed her of her vehicle at gunpoint, and robbed another person of his vehicle at gunpoint in a store parking lot. Although defendant argues that his sentences were too "extensive," in his appellate brief, defense counsel even acknowledges that:

There is no doubt that if one narrowly focuses on just the circumstances of the offense, some incarceration would be required. After all, an officer was shot, and two citizens were assaulted with a handgun and robbed.

Moreover, the sentences fit the offender. We first note that defendant was convicted of four offenses (assault with intent to murder, two counts of armed robbery and kidnapping) which impose a maximum penalty of life imprisonment. Defendant's record includes a conviction for receiving and concealing property over \$100, and two convictions for felony escape, in addition to a juvenile adjudication. In fact, at the time defendant committed the instant offenses, he had been released from prison less than two months. Furthermore, as the trial court noted, at the time of the instant case, defendant had additional charges for carjacking and firing upon a police officer pending in the US Federal District Court. The trial court further noted that, while in prison on previous convictions, defendant "had difficulty adjusting" resulting in his serving a maximum sentence. The court concluded, and we agree, that defendant "is a threat to the general public" who has "no remorse for his conduct." This finding by the trial court refutes defendant's contention that the trial court "never addressed defendant's rehabilitative potential" or "gave little weight to [defendant's] relatively minimal prior record." We conclude that defendant's sentences are proportional to the offender and the circumstances surrounding the offense. The trial court did not abuse its discretion.

Affirmed.

/s/ Myron H. Wahls

/s/ Harold Hood

/s/ Kathleen Jansen

¹ Jeanette Godfrey is a clinical psychologist. At defendant's competency hearing, following defense counsel's voir dire of Godfrey on her training and experience, the trial court ruled that she could testify as to her observations of defendant, although she could not offer an opinion as to whether he was competent to stand trial. Godfrey testified that during the twenty-five minutes that she was with defendant, he appeared to be lucid, coherent and goal oriented. She further indicated that he did not report any visual or auditory hallucinations, nor did he demonstrate any symptoms of any kind of psychosis, such as twitching or inappropriate speech.

² We initially note that defendant's citation in his appellate brief of the sentences he received is incorrect. The sentences imposed for his convictions for assault with intent to murder, armed robbery, kidnapping, UDAA, CCW, and being a felon in possession of a firearm were vacated in lieu of defendant being sentenced as a habitual offender, third offense.