

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARKIN H. NEELY,

Defendant-Appellant.

UNPUBLISHED

May 2, 1997

No. 186805

Detroit Recorder's Court

LC No. 94-005340

Before: Michael J. Kelly, P.J., and Saad and H.A. Beach,* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for assault with intent to commit murder, MCL 750.83; MSA 28.278, assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The court sentenced defendant to twenty-five to fifty years in prison for the assault with intent to murder conviction, five to ten years for the assault with intent to do great bodily harm conviction, and two years for the felony-firearm conviction. We affirm.

I

Defendant's contends that the trial court erred in denying his request for a further competency evaluation and in finding him competent to stand trial absent further evaluation. We disagree.

Before addressing defendant's substantive argument, we dispense with his claim that the trial court erred in not ordering further evaluation of his competency. MCL 330.2026; MSA 14.800(1026) and MCR 6.125(C)(1) provide that upon a showing that a defendant may be incompetent to stand trial, the trial court must order the defendant to undergo a competency examination at a certified facility. Here, such an examination was held and on the first day of trial, the trial judge had the resulting written report. There is no basis for defendant's assertion that MCR 6.125(C)(1) requires a second examination after one has already been conducted. Furthermore, defendant's failure to raise the issue

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

below precludes his claim that the trial court failed to follow the correct statutory procedures in resolving the issue of his competency to stand trial. See *People v Lucas*, 393 Mich 522, 529; 227 NW2d 763 (1975).

As to his competency, a defendant is incompetent to stand trial if he is incapable “of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner.” MCL 330.2020; MSA 14.800(1020); *People v Garfield*, 166 Mich App 66, 72-73; 420 NW2d 124 (1988). The determination of a defendant’s competence to stand trial is within the discretion of the trial court and, on appeal, is reviewed for an abuse of discretion. *Garfield*, 166 Mich App at 73. An abuse of discretion exists “only if an unprejudiced person, considering the facts on which the trial court relied in making its decision, would conclude that there was no justification for the ruling.” *People v Brisneo*, 211 Mich App 11, 14; 535 NW2d 559 (1995).

Here, the written competency report unambiguously concluded that defendant was competent to stand trial. Because neither the prosecution nor defendant chose to offer additional evidence during the hearing on competency, the trial court would have been justified in relying exclusively upon the written report. *People v Newton (After Remand)*, 179 Mich App 484, 488; 446 NW2d 487 (1989). However, the trial court went beyond the competency report and also considered the list of “motions” which defendant had asked to be filed on his behalf. We agree with the trial court’s conclusion that the list of “motions” indicate that defendant was aware of his status as a defendant in a criminal case. On the other hand, defendant’s allegedly “bizarre” behavior during the proceedings does not necessarily suggest that he was “incapable of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner.” MCL 330.2020; MSA 14.800(1020). Therefore, we hold that the trial court did not abuse its discretion when it found defendant competent to stand trial.

II

Defendant also contends that the trial court abused its discretion in sentencing him to twenty-five to fifty years’ imprisonment for his conviction of assault with intent to commit murder. We disagree.

Sentencing decisions are reviewed by this Court for abuse of discretion. *People v Milbourn*, 435 Mich 630, 634-635; 461 NW2d 1 (1990). A sentence constitutes an abuse of the trial court’s discretion if it violates the principle of proportionality. *Id.*

Defendant’s minimum sentence of twenty-five years for the assault with intent to commit murder conviction is within the guidelines’ recommended minimum sentencing range of fifteen to twenty-five years, and therefore is presumptively proportionate. *People v Dukes*, 189 Mich App 262, 266; 471 NW2d 651 (1991). Although in unusual circumstances, a sentence within the sentencing guidelines range might also be an abuse of discretion, *Milbourn*, 435 Mich at 661, such circumstances do not exist here. Defendant’s argument regarding his relatively minor, non-assaultive criminal history is unpersuasive, as the lack of any criminal history is not considered an unusual circumstance. *People v Daniel* 207 Mich App 47, 54; 523 NW2d 830 (1994). Defendant has also failed to explain how his current physical and mental condition demonstrates a violation of the principle of proportionality, and we

find no meaningful connection. Therefore, the trial court did not abuse its discretion when it sentenced defendant within the sentencing guidelines' recommended minimum sentencing range.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Harry A. Beach