

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMY LEE GRIFFIN, JR.,

Defendant-Appellant.

UNPUBLISHED

June 24, 1997

No. 178177

Jackson Circuit Court

LC No. 94-68848 FC

Before: Gage, P.J., and Reilly and Hoekstra, JJ.

MEMORANDUM.

Defendant appeals by right his jury convictions for one count each of first degree murder, assault with intent to commit murder, discharging a firearm in an occupied dwelling, carrying a concealed weapon, and possession of a firearm during commission of a felony. Defendant raises a single issue, a claim of ineffective assistance of trial counsel, based on the alleged failure of trial counsel to have defendant professionally evaluated for his competence to stand trial.

Defendant identifies no evidence in the record to suggest such incompetence. *Cf. People v Whyte*, 165 Mich App 409, 412-413; 418 NW2d 484 (1988). Defendant does point to a midtrial event, near the end of the prosecution's case-in-chief, where defense counsel noted for the record that, despite his best advice that defendant should accept a proffered plea bargain which would permit him to plead guilty to second degree murder and receive a paroleable life sentence, or better, defendant had insisted on continuing with the trial, despite a powerful prosecution case with every likelihood that he would be convicted of first degree murder, receive a nonparoleable life sentence, and serve the rest of his life in prison. The court inquired of defendant whether he understood the various sentence consequences outlined by his attorney, to which defendant replied in the affirmative, and whether defendant nonetheless wished to continue with trial, again receiving an affirmative response.

Based on the outcome of the proceedings, and the apparently well considered and accurate advice of trial counsel, defendant's decision to proceed with trial appears indeed to be a foolish one. But defendant had the right to make an unintelligent decision; this is not evidence of incompetence to stand trial. Indeed, defendant can intelligently exercise his options simply by knowing of the available

choices before deciding what he thinks best suits his particular situation, whether or not the decision made is actually the best one possible or even in his best interests. *People v Cheatham*, 453 Mich 1, 28; 551 NW2d 355 (1996). As there is no record evidence of incompetence which would have prompted a minimally competent criminal defense attorney to file a motion seeking a competency determination, defendant has failed to establish the prejudice prerequisite to appellate relief on a claim of ineffective assistance of counsel. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Affirmed.

/s/ Hilda R. Gage

/s/ Maureen Pulte Reilly

/s/ Joel P. Hoekstra