

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON ANTHONY WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

May 21, 2002

No. 231240

Wayne Circuit Court

Criminal Division

LC No. 00-002777

Before: Smolenski, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of first-degree premeditated murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to the mandatory statutory terms of life imprisonment without parole for the first-degree murder conviction, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right, and we affirm.

Defendant admitted shooting the victim after a fight broke during a dice game. The prosecution's witnesses testified that the victim was involved in a fight with defendant's cousin, but was unarmed at the time he was shot several times by defendant. Defendant and his cousin both claimed that the victim was armed with a gun and that defendant shot the victim to protect his cousin.

I

Defendant first argues that he was deprived of his right to a speedy trial. A defendant has the constitutional right to a speedy trial. US Const, Ams VI and XIV; Const 1963, art 1, § 20. *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000). See also MCL 768.1 and MCR 6.004(A). In deciding if a defendant has been denied his constitutional right to a speedy trial, this Court considers "(1) the length of delay, (2) the reason for the delay, (3) the defendant's assertion of the right to a speedy trial, and (4) any prejudice to the defendant." *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997).

Applying the above factors, we find no violation of defendant's right to a speedy trial. The record indicates that defendant was arrested in Georgia and extradited to Michigan, arriving in this state on February 9, 2000. He was arraigned on the warrant on February 11, 2000, and his

preliminary examination was held on February 24, 2000. On March 10, 2000, he was arraigned in circuit court. On April 27, 2000, the trial court set a trial date of September 18, 2000, and defendant's trial actually commenced on that date.

Although the reasons for delay are not apparent from the record, the total length of the delay, less than eight months after defendant's arrival in Michigan, was not substantial. Moreover, even if some of the delay is attributable to docket congestion, this would be considered a neutral factor, which is given only minimal weight. *People v Wickham*, 200 Mich App 106, 111; 503 NW2d 701 (1993). Defendant did not assert his right to a speedy trial in the trial court, a factor we consider significant given that defendant was aware as early as April 2000 that his trial was scheduled for September 18, 2000. Thus, this factor weighs against finding that defendant was denied his right to a speedy trial. *Id.* at 112.

As for prejudice, because the delay was less than eighteen months, the burden is on defendant to show prejudice as a result of the delay. *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994). There are two types of prejudice involved in a speedy trial claim, prejudice to the person and prejudice in the defense. *Id.* Because the delay in this case was not substantial, we are not persuaded that defendant has shown prejudice to his person. See *People v Cain*, 238 Mich App 95, 112-113; 605 NW2d 28 (1999). Further, defendant's generalized allegations of prejudice to his defense are insufficient to establish that he was denied his right to a speedy trial. *Gilmore, supra* at 462.

In light of the foregoing, defendant has not demonstrated that he was denied his right to a speedy trial.

Defendant also argues that his attorney was ineffective for not raising this issue in the trial court and that this Court should remand this case to allow defendant to properly raise this issue. Because we find no basis in the record for concluding that defendant's right to a speedy trial was violated, we reject both of these claims. See *People v Simmons*, 140 Mich App 681, 685-686; 364 NW2d 783 (1985).

II

Defendant contends that the evidence was insufficient to convict him of first-degree murder and felony-firearm. We disagree.

Our review is de novo to determine whether there was sufficient evidence to justify a rational trier of fact in finding defendant guilty beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513; 489 NW2d 748, amended 441 Mich 1201 (1992).

To convict a defendant of first-degree murder, the prosecution must prove that the defendant intentionally killed the victim and that the killing was premeditated and deliberated. Premeditation and deliberation require sufficient time to allow the defendant to take a second look. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

Defendant does not dispute that the evidence showed that he intentionally killed the victim. Instead, he challenges only the evidence of premeditation and deliberation. The evidence indicated that defendant left the fighting and walked to his car to retrieve his gun, whereupon he returned to the scene of the fighting and shot the victim several times. Defendant then began to walk away, took time to unjam his gun, and then fired a second set of shots at the victim. Viewed most favorably to the prosecution, the evidence was sufficient to enable the trial court, as the trier of fact, to find beyond a reasonable doubt that defendant shot the victim with premeditation and deliberation. Additionally, because the evidence showed that defendant used a firearm to commit the killing, the evidence was sufficient to support defendant's conviction for felony-firearm.

To the extent defendant argues that the trial court's findings were inadequate, we disagree. Under MCR 6.403, a trial court sitting without a jury is required to state its findings and conclusions either on the record or in a written opinion. The court's findings are sufficient so long as it appears that the court was aware of the issues in the case and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992).

Here, the trial court was not required to make specific findings on each element of the charged offense. *Id.* It is apparent from reviewing the trial court's findings that the court was well aware of the elements for the offenses charged and the defense theories presented. The case turned on the conflicting versions of the events presented by the defense and prosecution witnesses, and the trial court expressly indicated that it did not find any of the defense witnesses to be credible. The court also expressly found that defendant shot the victim "in cold blood." Defendant has not shown that the trial court's findings were inadequate.

III

Defendant further argues that the great weight of the evidence established that he was guilty, at most, of voluntary manslaughter.

Relief may be granted on the basis that the verdict was against the great weight of the evidence only where the evidence preponderates heavily against the verdict so that a miscarriage of justice would result if the verdict was allowed to stand. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998).

"The elements of voluntary manslaughter are (1) the defendant must kill in the heat of passion, (2) the passion must be caused by an adequate provocation, and (3) there cannot be a lapse of time during which a reasonable person could control his passions." *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998), *aff'd* 461 Mich 992 (2000). The offense of manslaughter is distinguished from murder by the element of provocation. *Id.* The decision on what constitutes reasonable provocation is a question for the trier of the facts. *Id.*

The evidence of provocation in this case was not so extreme or severe to compel the conclusion that a reasonable person would have been provoked to commit the offense in this case. *Sullivan, supra* at 519. Defendant was not directly involved in the fight at the time of the shooting, and the trial court rejected the defense claim that the victim was armed with a gun. The

trial court's verdict finding defendant guilty of first-degree murder rather than manslaughter is not contrary to the great weight of the evidence.

IV

Defendant further argue that the trial court did not adequately resolve on the record the defense theory that defendant acted either in self-defense or in defense of his cousin. We disagree. The defense theories were directly dependent on the credibility of the defense witnesses. The trial court expressly stated that it did not find either defense witness credible. The trial court's statements on the record are sufficient to show that the court was aware of the defense theories presented and how it resolved those issues. *Legg, supra*.

V

In his final issue, defendant argues that his trial attorney was ineffective for (1) raising inconsistent defenses and (2) not properly investigating the criminal backgrounds of the prosecution's witnesses and the victim.

In order for this Court to reverse due to ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced him that he was denied his right to a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). Defendant must overcome the presumption that the challenged action might be considered sound trial strategy. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991). To establish prejudice, defendant must show that there was a reasonable probability that, but for his counsel's error, the result of the proceeding would have been different. *People v Johnnie Johnson, Jr*, 451 Mich 115, 124; 545 NW2d 637 (1996). The burden is on defendant to produce factual support for his claim of ineffective assistance of counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

First, defendant argues that trial counsel was ineffective for raising inconsistent defenses of self-defense and defense of others. Defendant testified that he shot the victim because the victim fired first and defendant was trying to stop the victim from hurting his cousin. While there was evidence that defendant was trying to protect his cousin from the victim, there was also evidence that the victim both assaulted and threatened defendant shortly before the shooting. In his closing arguments, defense counsel argued that, apart from the case involving the defense of others, it could also involve imperfect self-defense in light of the victim's conduct towards defendant, thereby reducing the crime to manslaughter. We are satisfied that defense counsel appropriately argued plausible theories that were consistent with the testimony and evidence presented at trial. Defendant has not shown that defense counsel was ineffective, or that if he was, it affected the court's decision.

Defendant also argues that defense counsel was ineffective for not investigating the criminal records of the prosecution's witnesses or the victim. First, it is not apparent from the record what efforts, if any, were made to investigate the criminal backgrounds of the prosecution's witnesses or the victim. Thus, we cannot conclude that defense counsel was deficient in this regard. *People v Rockey*, 237 Mich App 74, 77; 601 NW2d 887 (1999). Further, defendant has not established that any of the witnesses had prior convictions that would have

been admissible for purposes of impeaching their credibility. MRE 609. In his offer of proof, defendant has shown that one witness had a prior conviction for possession of less than twenty-five grams of cocaine, which would not have been admissible for impeachment purposes, because it does not contain an element of dishonesty, false statement, or theft, and another witness had a misdemeanor conviction for larceny, which although involving theft, was not punishable for more than one year. MRE 609(a); *People v Parcha*, 227 Mich App 236, 241; 575 NW2d 316 (1997). Because defendant does not allege that any of the other witnesses had a prior conviction that could have been admitted under MRE 609, he has failed to demonstrate either that defense counsel was deficient, or resulting prejudice.

Defendant further requests that the case be remanded for an evidentiary hearing on his ineffective assistance of counsel claim. *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973). This Court previously denied defendant's motion to remand. Because defendant has not identified any facts justifying a remand, we decline to do so. *Simmons, supra*.

Affirmed.

/s/ Michael R. Smolenski

/s/ Janet T. Neff

/s/ Helene N. White