

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES LEE DANIELS,

Defendant-Appellant.

UNPUBLISHED

April 24 2001

No. 215131

Calhoun Circuit Court

LC No. 96-001424-FC

Before: Cavanagh, P.J., and Markey and Collins, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to life imprisonment for the murder conviction and a consecutive two-year term for the felony-firearm conviction. He now appeals by delayed leave granted. We affirm.

Defendant argues that the trial court abused its discretion by denying his request for substitution of counsel. We disagree. Although an indigent defendant is constitutionally guaranteed the right to counsel, he is not entitled to the appointment of an attorney of his choice. *People v Flores*, 176 Mich App 610, 613; 440 NW2d 47 (1989). Appointment of substitute counsel is warranted only upon a showing of good cause and if substitution will not unreasonably disrupt the judicial process. *In re Conley*, 216 Mich App 41, 46; 549 NW2d 353 (1996).

The record reveals that each time a disagreement arose regarding counsel's representation of defendant, the trial court fully investigated defendant's complaints and found them to be without merit. Defendant does not explain how the court's decisions were erroneous. We agree, therefore, that defendant failed to establish good cause for substitution. Accordingly, the trial court did not abuse its discretion in denying defendant's requests for substitution.

Defendant also argues that the court erred by not allowing him to represent himself earlier in the proceeding. The record indicates that when defendant initially asked to represent himself, the trial court made the proper inquiry, following which defendant decided that he wanted to continue with counsel. When the issue arose a second time, the trial court granted defendant's request. Therefore, there is no merit to this issue.

In a related issue, defendant contends that trial counsel was ineffective. We disagree. Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms and there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995).

Although defendant complained numerous times about counsel's representation, the record discloses that defendant's complaints were either meritless or involved matters of trial strategy that we will not second-guess. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987). Defendant has failed to demonstrate either that counsel's performance was deficient, or that he was prejudiced by the alleged improper conduct.

Defendant also complains that the trial court's instruction to the jury concerning his self-representation was deficient. Because defendant did not object to the court's jury instruction at trial, appellate relief is precluded absent a showing of plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999). Here, defendant has not cited any authority in support of his claim that the court's jury instruction was deficient and, therefore, has not demonstrated any plain error.

Finally, defendant contends that there was insufficient evidence to support his conviction of first-degree murder. We disagree. To establish first-degree premeditated murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was deliberate and premeditated. *People v Haywood*, 209 Mich App 217, 229; 530 NW2d 497 (1995). The elements of premeditation and deliberation may be inferred from all the facts and circumstances surrounding the incident, including the parties' relationship, the actions of the accused both before and after the crime, and the circumstances of the killing itself. *Id.*

The prosecution presented evidence that defendant was upset with the victim because he had to pay child support for the victim's child, that defendant told a friend he wanted to get rid of the victim, and that defendant detailed a plan for killing the victim to a coworker. In addition, evidence indicated that the victim's blood was found on defendant's boots, that bullets recovered from defendant's house were of the same type used to shoot the victim, and that defendant was overheard apologizing to the victim at the victim's funeral. Viewed most favorably to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant killed the victim and did so with premeditation and deliberation. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jeffrey G. Collins