STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 30, 2000
v	No. 212738 Wayne Circuit Court
DOUGLAS PHILLIPS, Defendant-Appellant.	LC No. 97-010139

Before: McDonald, P.J., and Gage and Talbot, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to two concurrent terms of fifteen to thirty years for the assault convictions, and a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right, and we affirm.

Defendant first contends that insufficient evidence supported the trial court's finding that he had the requisite intent to murder. In reviewing the sufficiency of the evidence following a bench trial, we must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-269; 380 NW2d 11 (1985). The elements of assault with intent to commit murder are (1) an assault, (2) with the actual intent to kill, (3) which, if successful, would make the killing murder. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The intent to kill may be proved by inference from any facts in evidence. Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient. *Id*. The victims testified that defendant retrieved a sawed-off shotgun, fired at them from fairly close range, and struck the victims about their heads and faces. Viewing the instant record in the light most favorable to the

prosecution, we conclude that the trial court rationally could have inferred that defendant intended to kill the victims.[1]

Defendant next claims that neither he nor his attorney had the opportunity prior to sentencing to review the presentence report. Because defendant failed to raise this issue below, either at the time of sentencing or by filing a postsentencing motion, this issue is not preserved for appeal. *People v Hernandez*, 443 Mich 1, 13 n 16; 503 NW2d 629 (1993); *People v Hamm*, 206 Mich App 270, 272-273; 520 NW2d 706 (1994). We note, however, that no indication exists within the record that the trial court failed to provide defendant with a reasonable period to review the presentence report. MCR 6.425(B). As defendant concedes, defense counsel indicated at the beginning of the sentencing hearing that "[a]s you can see from the report, [defendant's] got a lovely report." This comment suggests that defendant and defense counsel reviewed the presentence report prior to sentencing. Furthermore, defendant does not allege on appeal that the presentence report contained any inaccurate information, nor does he otherwise indicate how he was prejudiced by his alleged inability to review the presentence report. Accordingly, appellate relief is not warranted. MCL 769.26; MSA 28.1096.

Lastly, defendant asserts that he was denied the effective assistance of counsel. Because defendant did not raise this issue in motion for a *Ginther*[2] hearing or for new trial, our review is limited to mistakes apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). We find that defendant has not sustained his burden of establishing ineffective assistance of counsel. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). The available record does not factually support defendant's claims that counsel's performance fell below an objective standard of reasonableness or that the representation so prejudiced him that it deprived him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Affirmed.

/s/ Gary R. McDonald
/s/ Hilda R. Gage
/s/ Michael J. Talbot

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[1] To the extent that defendant challenges the trial court's credibility determinations, we will not on appeal second guess these. *McRunels, supra*.

[2] *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).