STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JUDE ANDERSON,

Defendant-Appellant.

UNPUBLISHED
July 7, 2000

No. 212425
Wayne Circuit Court
Criminal Division
LC No. 96-003301

Before: Gribbs, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant pleaded guilty to first-degree murder, MCL 750.316; MSA 28.548, and mutilation of a human body, MCL 750.160; MSA 28.357. He was sentenced to a term of life imprisonment without parole for the murder conviction and an enhanced term of ten to twenty years' imprisonment, as an habitual offender, second offense, MCL 769.10; MSA 28.1082, for the mutilation conviction. He appeals by delayed leave granted from the trial court's order denying his motion for relief from judgment. We affirm.

Defendant first argues that he is entitled to relief from judgment because his competency to plead guilty was questionable, particularly in light of his use of certain anti-depressant medications. He, therefore, contends that his plea was not intelligently and knowingly made. We disagree.

A guilty plea is the most serious step a defendant can take in a criminal prosecution. For that reason, a plea not only must be voluntary but must be a knowing, intelligent act done with sufficient awareness of the relevant circumstances and likely consequences. *People v Thew*, 201 Mich App 78, 95; 506 NW2d 547 (1993), quoting *Brady v United States*, 397 US 742, 747-748; 90 S Ct 1463; 25 L Ed 2d 747 (1970). A defendant's guilty plea will not be set aside when an appellate court is convinced that it was knowingly, intelligently, and voluntarily given. *People v Gonzalez*, 197 Mich App 385, 391; 496 NW2d 312 (1992).

The state may not proceed against an incompetent defendant. *People v Parney*, 74 Mich App 173, 176; 253 NW2d 698 (1977); MCL 330.2022(1); MSA 14.800(1022)(1). A defendant must be competent in order to plead guilty. *People v Whyte*, 165 Mich App 409, 411; 418 NW2d 484

(1988); *People v Kline*, 113 Mich App 733, 738; 318 NW2d 510 (1982). A criminal defendant is presumed competent to stand trial or plead guilty absent a showing that he is incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner. MCL 330.2020(1); MSA 14.800(1020)(1). Where facts are brought to the trial court's attention which raise a bona fide doubt as to a defendant's capacity to stand trial, it is the trial court's duty to raise the issue of competency. *People v Johnson*, 58 Mich App 473, 475; 228 NW2d 429 (1975). Whether a bona fide doubt exists, however, is a decision within the discretion of the trial court which will only be reversed for an abuse of discretion. *Id*.

In this case there was no showing made, either before or after the acceptance of the plea, that defendant was incompetent to plead guilty. The record shows that, before defendant's guilty plea hearing, he had undergone four psychiatric examinations to determine his competency to stand trial and his competency to be held criminally responsible, one of which was an independent examination. Defendant was found competent following each of the four examinations,. Further, before accepting defendant's plea, the trial court questioned defendant extensively regarding his ability to comprehend the proceedings, his rights, the role of the court and the attorneys, and his presumption of innocence. Then, following defendant's plea and before sentencing, the trial court ordered another psychiatric examination, at defense counsel's request. Defendant was again found competent.

We reject defendant's claim that the fact that he was taking Zoloft and Prozac raised a question of incompetence. There was no evidence presented supporting this claim that raised a bona fide doubt as to defendant's competency to plead guilty. *Johnson*, *supra*. The issue of competence can *only* be raised *by evidence* of incompetence. *People v Blocker*, 393 Mich 501, 508-510; 227 NW2d 767 (1975). We also reject defendant's suggestion that his plea was not knowing and intelligent simply because it was made against defense counsel's advice. Counsel's responsibility is to provide the defendant the requisite information to allow the defendant to make an informed decision whether to plead guilty. The ultimate decision to plead guilty, however, is the defendant's. *People v Effinger*, 212 Mich App 67, 71; 536 NW2d 809 (1995).

We likewise reject defendant's claim that the very fact that he pleaded guilty to first-degree murder raises a question of his competence or whether the plea was knowingly and intelligently made. Defendant has failed to provide any authority to support such a claim. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997). Further, this Court has held, in the context of discussing an ineffective assistance of counsel claim, that a guilty plea to first-degree murder is not per se proof that the plea was not knowingly and intelligently made. See, generally, *Effinger*, *supra*. Accordingly, we conclude that defendant's plea was knowingly and intelligently made, and defendant has failed to show actual prejudice from the trial court accepting his guilty plea.

In the alternative, defendant argues that he is entitled to relief from judgment because his plea lacked a sufficient factual basis, particularly with regard to the element of premeditation. Again, we disagree. MCR 6.302(D)(1) requires that the trial court question a defendant to establish support for a finding that he is guilty of the offense to which he is pleading guilty. In reviewing the adequacy of the factual basis for a plea, this Court examines whether the factfinder could properly convict on the facts

elicited from the defendant at the plea proceeding. *People v Brownfield (After Remand)*, 216 Mich App 429, 431; 548 NW2d 248 (1996). A factual basis is sufficient if an inculpatory inference can be drawn from what the defendant has admitted. *In re Guilty Plea Cases*, 395 Mich 96, 130; 235 NW2d 132 (1975).

In order to convict a defendant of first-degree murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). Premeditation and deliberation require sufficient time to allow the defendant to take a "second look" at the actions contemplated. *Id*. The length of time necessary to measure and evaluate a choice before it is made is incapable of precise determination. *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993). Premeditation and deliberation may be inferred from the circumstances surrounding the killing, and may be established through evidence of the following factors: (1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the killing. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992).

The following exchange occurred at defendant's guilty plea hearing regarding the factual basis:

[Defendant]: I got into an argument. We got into an argument about the baby. And I jumped up and started choking her.

[Trial court]: You jumped up and did what?

[Defendant]: And started choking her. I couldn't stop. I couldn't stop, and I tried to revive her but I couldn't do it. And something- - I couldn't blow air in. So, I tried to get rid of the body.

* * *

[Trial Court]: All right. You intended to kill [the victim]?

[Defendant]: Yes.

[Trial court]: It was premeditated?

Defendant]: Yeah.

[Trial court]: Then you tried to get rid of the body, is that what you're telling the Court?

[Defendant]: Yeah.

[Trial court]: How did you do that?

[Defendant]: With a one inch utility knife.

[Trial court]: What exactly did you do with that one inch utility knife?

[Defendant]: I was cutting. I was cutting.

[Trial court]: You were cutting her, the body?

[Defendant]: Yeah.

[Trial court]: Then what did you do with it?

[Defendant]: Bagged it up and threw her away.

We conclude that a factfinder could properly convict defendant of first-degree murder on the facts admitted at the plea proceeding. Considering the very brutal and time consuming nature of strangulation, a jury could reasonably infer that defendant had an opportunity to take a "second look" before killing the victim. Moreover, defendant's conduct of dismembering the victim's body following the murder, and severing her head from her body, bagging the members, and throwing the bags away, supports a finding of premeditation. *Schollaert*, *supra*. Accordingly, a sufficient factual basis existed to infer premeditation and, hence, first-degree murder.

We reject defendant's claim that he is entitled to relief because the record fails to show that he understood the term "premeditation." Contrary to defendant's position, the trial court could not presume that he did not know the meaning of premeditation, particularly where he had the assistance of counsel, and did not indicate that he misunderstood the meaning of the term when he admitted that the act was done with premeditation. In addition, the record shows that defense counsel conferred with defendant on more than one occasion about his decision to plead guilty. In sum, defendant has failed to show actual prejudice from the alleged irregularities that support the claim for relief. MCR 6.508(D)(3)(a) and (b).

Affirmed.

/s/ Roman S. Gribbs
/s/ Joel P. Hoekstra
/s/ Jane E. Markey