

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID T. BOOTH,

Defendant-Appellant.

UNPUBLISHED

February 6, 2001

No. 217295

Recorder's Court

LC No. 96-007454

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

Defendant David Booth appeals as of right from his convictions of first-degree (felony) murder,¹ assault with intent to commit murder,² first-degree home invasion,³ and possession of a firearm during the commission of a felony,⁴ entered after a bench trial. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

At trial, the evidence showed that Booth broke into the apartment of a woman to whom he was attracted, shot her in the arm, shot and killed her boyfriend, and ransacked the residence. Booth concealed the weapon in a food container and placed the container in a dumpster. After being arrested, Booth made incriminating statements and revealed the location of the weapon. The trial court found Booth guilty as charged. At sentencing, the trial court stated that while it was aware that Booth had had psychological problems for which he had been treated, it was of the opinion that he had the requisite state of mind to be found guilty of the charged offenses.

¹ MCL 750.316; MSA 28.548.

² MCL 750.83; MSA 28.278.

³ MCL 750.110a(2); MSA 28.305(a)(2).

⁴ MCL 750.227b; MSA 28.424(2).

* Circuit judge, sitting on the Court of Appeals by assignment.

II. Ineffective Assistance Of Counsel

A. Legal Standard

Booth argues that his trial counsel was ineffective. To establish ineffective assistance of counsel, a defendant must show that defense counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and that counsel's performance resulted in prejudice.⁵ To demonstrate prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different, making the proceeding unfair or unreliable.⁶ Counsel is presumed to have afforded effective assistance, and a defendant bears the burden of proving otherwise.⁷

B. Insanity Defense

Booth argues that his counsel was ineffective because he failed to present an insanity defense. Legal insanity is an affirmative defense to a charged crime.⁸ A person is legally insane if, as a result of mental illness, he lacks the substantial capacity to appreciate the nature and quality or the wrongfulness of his conduct, or to conform his conduct to the requirements of the law.⁹ Mental illness, in and of itself, does not constitute the defense of legal insanity.¹⁰

We note that when Booth broke into the apartment, he targeted and attacked only the woman to whom he was attracted and her boyfriend. Booth did not harm other persons in the apartment. Booth destroyed various items in the apartment, including a television set that he had given to the woman. Booth made a conscious effort to conceal the weapon. When Booth was arrested, he admitted his involvement and revealed the location of the weapon. We conclude that Booth's actions do not suggest that he did not understand the wrongfulness of his conduct, or that he could not conform his conduct to the law. MCL 768.21a(1); MSA 28.1044(1)(1).

Further, we note that the record reveals that Booth was referred to the Recorder's Court Clinic for a competency examination. Nothing indicates that he was found to be incompetent to stand trial. Under the circumstances, it is not reasonably likely that had a defense of insanity been presented, the result of the proceedings would have been different; therefore, Booth has not

⁵ *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

⁶ *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000); *People v Poole*, 218 Mich App 702, 718; 555 NW2d 485 (1996).

⁷ *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

⁸ See, generally, *People v Eason*, 435 Mich 228, 242; 458 NW2d 17 (1990); MCL 768.21a; MSA 28.1044(1).

⁹ MCL 768.21a; MSA 28.1044(1).

¹⁰ *People v Stephan*, 241 Mich App 482, 489-492; ___ NW2d ___ (2000).

shown prejudice.¹¹ Further, defense counsel's decision to forego an insanity defense was trial strategy, for which we will not substitute our judgment on appeal.¹²

Affirmed.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew

¹¹ *Toma, supra*; see also *People v Newton (After Remand)*, 179 Mich App 484, 493; 446 NW2d 487 (1989).

¹² *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999).