

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDALL S. LEFEVRE,

Defendant-Appellant.

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UNPUBLISHED

July 24, 2001

No. 221296

Wayne Circuit Court

LC No. 98-006779

Before: Bandstra, C.J., and White and Collins, JJ.

PER CURIAM.

Following a jury trial, defendant, was convicted of assault with intent to commit great bodily harm less than murder, MCL 750.84, carjacking, MCL 750.529a, and possession of a firearm during the commission of felony, MCL 750.227b. He was sentenced as a second habitual offender, MCL 769.10, to ten to fifteen years' imprisonment for the assault with intent to commit great bodily harm conviction, twenty to thirty years' imprisonment for the carjacking conviction, and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court deprived him of access to the court and the resources necessary for him to prepare a meaningful defense, thus impeding his rights to self-representation and due process. Specifically, defendant contends that he could not prepare a meaningful defense because the trial court denied his motions requesting more library time, a private investigator, a ballistics expert, and a vehicle expert, and because he did not receive certain discovery materials when requested. We review questions of constitutional law de novo. *People v McRunels*, 237 Mich App 168, 171; 603 NW2d 95 (1999).

There is a constitutional right to self-representation under the Sixth Amendment of the United States Constitution and under Const 1963, art 1; § 13. *People v Ramsdell*, 230 Mich App 386, 405; 585 NW2d 1 (1998). Further, incarcerated defendants have a constitutional right of access to the courts. *People v Mack*, 190 Mich App 7, 20; 475 NW2d 830 (1991).

[T]his right of access to the courts requires providing prisoners with adequate assistance from persons trained in the law *or* adequate law libraries to assist prisoners in the filing of legal papers. "Prisoners are to be supplied some means of obtaining legal assistance, be it in the form of adequate prison libraries,

‘jailhouse lawyers,’ or outside legal assistance.” However, the constitutionally guaranteed right is the “right of access to the courts, not necessarily to a prison law library.” Restricted access to a law library is not, per se, a denial of access to the courts. The law library is but one factor in the totality of all factors bearing on the inmate’s access to the courts which should be considered. [*Id.*; citations omitted.]

Here, it is undisputed that defendant unequivocally, knowingly, intelligently, and voluntarily waived his right to counsel and requested to proceed in propria persona. *People v Anderson*, 398 Mich 361, 367-368; 247 NW2d 857 (1976). The trial court explained to defendant the pitfalls of self-representation, thus satisfying the requirements of MCR 6.005, *People v Belanger*, 227 Mich App 637, 642; 576 NW2d 703 (1998), and defendant chose to represent himself. Defendant was allocated four hours a week of library time. Further, the trial court provided defendant with stand-by counsel and told defendant that stand-by counsel was to be used as a conduit for any legal research defendant could not conduct during his allotted library hours. Although defendant contends that stand-by counsel was “disinterested,” the record shows that stand-by counsel filed the motions requested by defendant, albeit not as promptly as defendant asked. Moreover, this case is distinguishable from *Milton v Morris*, 767 F2d 1443 (CA 9, 1985), on which defendant relies heavily. In *Milton*, the defendant “lacked all means of preparing and presenting a defense, and was unjustifiably prevented from contacting a lawyer or others who could have assisted him.” *Id.* at 1446. Because defendant in this case was not “deprived of all avenues of meaningful access to the court,” *Mack, supra* at 24, the trial court’s denial of his motion for more library time did not violate his constitutional right to due process.

Defendant also argues that he was denied resources that were necessary to the preparation of his defense when the trial court denied his requests for a private investigator, a ballistics expert, and a vehicle expert. However, defendant did not articulate a factual basis for this additional assistance before trial, his trial testimony did not provide a factual basis for the assistance requested, and, on appeal, he does not show how the trial court’s denial of his requests prevented him from preparing a meaningful defense. See *United States v Kind*, 194 F3d 900, 905 (CA 8, 1999). Accordingly, the court’s denial of his requests did not violate his right to due process.

Defendant further contends that he was unable to prepare a meaningful defense because he did not receive his preliminary examination transcript until three days before trial and did not receive a one-hundred page medical report and ballistics evidence until the second day of trial. Although defendant contends that “there may have been a number of arguments” that he could have developed based on this evidence if he had received it sooner, he does not indicate what arguments he was precluded from making because of the tardy production of the requested evidence. Again, because defendant has not shown that his ability to prepare a defense was prejudiced in any regard by the last-minute receipt of this evidence, he is not entitled to a new trial. *Id.*

Defendant next argues that prosecutorial misconduct denied him a fair trial. Since defendant failed to timely and specifically object to the prosecutor’s statements, appellate relief is

precluded absent a showing of plain error that affected defendant's substantial rights. *People v Carines* 460 Mich 750, 763; 597 NW2d 130 (1999).

After reviewing the prosecutor's remarks in context, we conclude that his comment that defendant manipulates testimony to his advantage was permissible comment on defendant's credibility, not impermissible comment on defendant's right to participate in his defense, as was the case in *People v Sterling*, 154 Mich App 223, 232; 397 NW2d 182 (1986), where the prosecutor characterized the defendant's actions as manipulative abuses of the legal system. With regard to the remaining comments challenged by defendant on appeal, our review of the prosecutor's entire closing argument shows that he permissibly argued from the facts that defendant was not worthy of belief. *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996). Because we find no plain error affecting defendant's substantial rights, reversal is not warranted.

Affirmed.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Jeffrey G. Collins