

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD EUGENE MANLEY,

Defendant-Appellant.

UNPUBLISHED
November 19, 2002

No. 231667
Wayne Circuit Court
LC Nos. 75-002132
75-002133

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying his motion for relief from judgment. We affirm.

I. Basic Facts and Procedural History

Following a bench trial in February 1976, defendant was convicted of two counts of carnal knowledge of a female over sixteen years of age, MCL 750.20, and one count each of kidnapping, MCL 750.349, armed robbery, MCL 750.529, sodomy, MCL 750.158, and assault with intent to commit gross indecency, MCL 750.85.¹ Defendant was subsequently sentenced to serve two concurrent terms of life imprisonment and appealed. This Court affirmed the convictions in an unpublished memorandum opinion. See *People v Manley*, unpublished memorandum opinion of the Court of Appeals, issued September 9, 1977 (Docket No. 28351). In March 2000, defendant brought a motion for relief from judgment alleging trial and sentencing errors, as well as ineffective assistance of trial and appellate counsel. The trial court denied the motion, finding that defendant should have raised the trial, sentencing, and ineffective assistance of trial counsel issues on direct appeal, and that there was no merit to his claim of ineffective assistance of appellate counsel. This Court granted defendant's application for leave to appeal the trial court's decision in this regard.

¹ MCL 750.85 and MCL 750.520 were repealed by 1974 PA 266, § 4, and replaced by the new criminal sexual conduct statute, MCL 750.520a *et seq.*

II. Standard of Review

A defendant is not entitled to relief from judgment where he alleges grounds for relief that could have been raised on direct appeal or in a prior motion, unless the defendant demonstrates good cause for failure to raise such grounds in the past, and actual prejudice from the alleged irregularities. MCR 6.508(D)(3). To demonstrate “actual prejudice,” a defendant must show that either (1) “but for the alleged error, the defendant would have had a reasonably likely chance of acquittal,” or (2) “the irregularity was so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand regardless of its effect on the outcome of the case.” MCR 6.508(D)(3)(b)(i) and (iii). A trial court’s ruling on a motion for relief from judgment is reviewed for an abuse of discretion. See *People v Ulman*, 244 Mich App 500, 508; 625 NW2d 429 (2001).

III. Analysis

A. Failure to Hold a Competency Hearing During Trial

In seeking relief from judgment below, defendant first argued that he was denied due process as a result of the trial court’s failure to sua sponte hold a competency hearing after two expert witnesses suggested at trial that defendant remained incompetent to stand trial.² After review of the record, we find no error in the trial court’s conclusion that defendant failed to demonstrate entitlement to relief on this ground.

Although “[t]he protection afforded by the Due Process Clause requires that a court sua sponte hold a hearing regarding competency when any evidence raises a bona fide doubt about the competency of the defendant,” *In re Carey*, 241 Mich App 222, 227-228; 615 NW2d 742 (2000), the expert testimony relied on by defendant concerned not defendant’s competency at the time of trial, but rather at the time of the witnesses’ prior examinations of defendant in June 1975. Given that defendant was, subsequent to these examinations, adjudicated competent to stand trial, and considering that the remainder of these witnesses’ testimony concerned only defendant’s mental capacity for purposes of criminal responsibility, we find no error in the trial court’s failure to sua sponte hold yet another competency hearing. Accordingly, defendant having failed to demonstrate the prejudice necessary to entitle him to relief under MCR 6.508, the trial court did not abuse its discretion in denying the motion on this ground.³

² Although initially found competent to stand trial in April 1975, defendant was later adjudicated incompetent after examinations conducted in June and July 1975. Following a fourth examination in September 1975, defendant was again found competent to stand trial and, as a result, was tried in February 1976. A fifth examination confirming defendant’s competency for purposes of sentencing was also conducted in February 1976.

³ In reaching this conclusion we find it significant that defendant cogently responded to the trial court’s questioning regarding defendant’s preference for a bench, as opposed to jury trial, and was adjudicated competent to be sentenced only days after the trial. See MCL 330.2020.

B. Defendant's Involuntary Medication at Trial

Defendant also sought relief from judgment below on the ground that he was involuntarily medicated during trial, in violation of his due process rights, and was, therefore, unable to assist in his defense. Again, given the lack of record support for defendant's claim we find no error in the trial court's refusal to grant defendant relief on this ground.

Although there was testimony at trial indicating that, in June 1975, defendant was taking at least three different forms of "sedatives," there is no indication or evidence supporting defendant's contention that he remained on these medications, involuntarily or otherwise, during his trial, or that, if he did, these medications rendered him unable to assist in his defense. Thus, even assuming that, as argued by defendant, a criminal defendant has a due process right to be free from the involuntary administration of antipsychotic medication during trial, see *Riggins v Nevada*, 504 US 127, 134, 137; 112 S Ct 1810; 118 L Ed 2d 479 (1992), defendant failed to establish any violation of such right here. Moreover, this Court has held that a defendant is not considered incompetent to stand trial, i.e., unable to assist in his defense, merely because "he is or has been prescribed psychotropic drugs or other medication without which he might be incompetent to stand trial." *People v Mette*, 243 Mich App 318, 331; 621 NW2d 713 (2000). Accordingly, we do not conclude that the trial court abused its discretion in denying defendant's motion on this ground.

C. Failure of Presence During Amendment of Sentence

Defendant also argued below that he was entitled to relief from judgment on the ground that he was denied his right to be present when the trial court entered an amended sentence in this matter. See *People v Palmerton*, 200 Mich App 302, 303; 503 NW2d 663 (1993). We again find that defendant failed to demonstrate the prejudice necessary to entitle him to the requested relief, and that, therefore, the trial court did not abuse its discretion in denying defendant's motion.

Defendant was initially sentenced on February 18, 1976, to two concurrent terms of life imprisonment for his convictions of carnal knowledge of a female over sixteen years of age, MCL 750.520. However, after learning that it had inadvertently failed to sentence defendant on his remaining convictions, the trial court amended the judgment of sentence following a hearing held April 7, 1976. Although it is clear that defendant was not present at this hearing, because in amending the judgment of sentence the trial court retained defendant's two concurrent life sentences while merely suspending sentence on the remaining convictions, defendant cannot establish that his absence from the later hearing was prejudicial as required for relief from judgment pursuant to MCR 6.508. In any event, because counsel for defendant effectively waived defendant's presence at the later sentencing hearing, any error in the trial court's entering of an amended sentence in defendant's absence is extinguished. See *People v Carter*, 462 Mich 206, 215, 218-219; 612 NW2d 144 (2000) (explaining that waiver is the intentional relinquishment or abandonment of a known right and that once such right has been abandoned or relinquished, any error is extinguished); see also, *Palmerton*, *supra* at 303-304 (a defendant can waive his right to be present at sentencing).

D. Ineffective Assistance of Trial and Appellate Counsel

In his final argument below, defendant claimed entitlement to relief from judgment on the basis of the failure of both trial and appellate counsel to address the competency issues raised in defendant's motion for relief from judgment and discussed above in Parts III A and B of this opinion. In accordance with our prior analysis, we find that defendant has failed to demonstrate that the performance of either his trial or appellate counsel fell below an objective standard of reasonableness, or that trial counsel's representation so prejudiced defendant as to deprive him of a fair trial. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000) (trial counsel is not effective for failing to advocate a meritless position); see also *People v Reed*, 198 Mich App 639, 646; 499 NW2d 441 (1993) (the failure to assert all arguable claims is not sufficient to overcome the presumption that counsel functioned as a reasonable appellate attorney in selecting the issues presented). Accordingly, because defendant has failed to establish either good cause or actual prejudice in support of his motion for relief from judgment, the trial court did not err in denying defendant relief. MCR 6.508(D)(3).

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Hilda R. Gage