

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHANTANTUS S. FRANKLIN,

Defendant-Appellant.

UNPUBLISHED

May 15, 2008

No. 275203

Genesee Circuit Court

LC No. 06-018315-FC

Before: Owens, P.J., and Meter and Schuette, JJ.

PER CURIAM.

After a jury trial, defendant Chantantus S. Franklin was convicted of one count of second-degree murder, MCL 750.317, two counts of assault with intent to commit murder, MCL 750.83, one count of carrying a concealed weapon, MCL 750.227, and one count of possession of a firearm during the commission of a felony (“felony-firearm”), MCL 750.227b. Defendant received concurrent sentences of 375 months to 65 years’ imprisonment for the second-degree murder conviction, 20 to 40 years’ imprisonment for each assault with intent to commit murder conviction, and 40 months to five years’ imprisonment for the carrying a concealed weapon conviction, and a consecutive sentence of two years’ imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Early in the morning of May 5, 2006, Akil Goodman was killed and David Washington and Greg Curry were injured in a shooting outside a bar in Flint Township, Michigan. Before the shooting, a series of arguments and fights inside the bar had prompted the bouncers to escort a large group of people outside. The group lingered near the front door underneath a canopy covering the sidewalk. When DeAndre Williams exited the bar, he started an argument with Goodman. After a verbal exchange, Williams made several attempts to walk away and Washington encouraged Goodman to leave. Witnesses testified that, suddenly, defendant fired several gunshots into the crowd, hitting Goodman and Washington. Defendant jumped into the rear passenger seat of his friend’s car parked nearby. The driver of the vehicle, Defan Pringle, fired several shots at the front door of the bar and then drove away. Police stopped the car soon thereafter and recovered two guns from the car. Forensics experts later concluded that the bullets and casings recovered at the scene were fired from these guns.

II. Ineffective Assistance of Counsel

On appeal, defendant argues that his trial counsel was ineffective for pursuing only an innocence defense instead of presenting the alternative argument that defendant was provoked and requesting a manslaughter instruction. We disagree. Our review of defendant's allegation of ineffective assistance of counsel is limited to mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). "Whether a person has been denied the effective assistance of counsel is a mixed question of fact and constitutional law. A judge must first find the facts, then must decide whether those facts establish a violation of the defendant's constitutional right to the effective assistance of counsel." *People v Grant*, 470 Mich 477, 484; 684 NW2d 686 (2004). We review the trial court's factual findings for clear error and its constitutional determinations de novo. *Id.* at 484-485.

To demonstrate ineffective assistance, a defendant must show that his attorney's performance fell below an objective standard of reasonableness and that this performance so prejudiced him that he was deprived of a fair trial. *Grant, supra* at 485-486. Prejudice exists if a defendant shows "a reasonable probability that the outcome would have been different but for counsel's errors." *Id.* at 486. Effective assistance is strongly presumed. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). "This Court will not second-guess counsel regarding matters of trial strategy, and even if defense counsel was ultimately mistaken, this Court will not assess counsel's competence with the benefit of hindsight." *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999).

A defendant is entitled to a manslaughter instruction if it is supported by a rational view of the evidence. *People v Mendoza*, 468 Mich 527, 542; 664 NW2d 685 (2003). "[T]o show voluntary manslaughter, one must show that the defendant killed in the heat of passion, the passion was caused by adequate provocation, and there was not a lapse of time during which a reasonable person could control his passions." *Id.* at 535. The provocation must cause "the defendant to act out of passion rather than reason." *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998), *aff'd* 461 Mich 992 (2000). The provocation must also be "that which would cause a *reasonable person* to lose control." *Id.* (emphasis in original).

Defense counsel was not ineffective for failing to request a manslaughter instruction because this instruction was not supported by a rational view of the evidence. *Mendoza, supra* at 542. The direct evidence suggests that defendant was not involved in the fights that occurred at the bar. Although defendant was present when Williams argued with Goodman by the front door, Williams merely threatened a fistfight. Goodman and Washington were not armed and the argument was waning when defendant shot at them repeatedly. Therefore, defendant was not adequately provoked to kill in the heat of passion. *Sullivan, supra* at 518. Because the evidence does not support a manslaughter instruction, trial counsel was not ineffective when he failed to request it. "Trial counsel is not required to advocate a meritless position." *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Defendant argues that it could be inferred, from his stained white t-shirt and evidence that a person with a white shirt was seen fighting inside the bar, that he had been in a fight. Consequently, defendant argues that he shot in the heat of passion. However, even if defendant had participated in that fight, the bouncer testified that those involved reconciled soon afterward. Defendant did not go outside to retrieve his gun from the car until all of the fights inside the bar

dissolved and the crowd was ejected 45 minutes later. Therefore, the period between the argument involving the man with the white t-shirt and the shooting was sufficient to allow defendant to control his passion.

Moreover, defendant has failed to overcome the presumption that his counsel's failure to request a voluntary manslaughter instruction constituted sound trial strategy. The defense strategy was to argue that defendant was not the shooter. Defense counsel's decision to pursue this defense and not request a manslaughter instruction falls within the purview of trial strategy, which we will not second-guess in hindsight. *Rice, supra* at 445.

Affirmed.

/s/ Donald S. Owens
/s/ Patrick M. Meter
/s/ Bill Schuette