

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
June 12, 2012

v

JUSTIN TODD GASKILL,
Defendant-Appellant.

No. 300896
Clare Circuit Court
LC No. 09-003660-FC

Before: MARKEY, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Defendant Justin Todd Gaskill appeals by right his jury convictions of two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b, kidnapping a child, MCL 750.350, first-degree home invasion, MCL 750.110a(2), and assault with a dangerous weapon, MCL 750.82. The trial court sentenced defendant as a habitual offender, second offense, MCL 769.10, to serve concurrent terms of 35 to 60 years in prison for each CSC I conviction. The trial court sentenced defendant to serve, consecutive to the CSC I convictions, concurrent terms of 35 to 60 years in prison for the kidnapping conviction, 200 months to 30 years in prison for the first-degree home invasion conviction, and 36 months to 6 years in prison for the felonious assault conviction. On appeal, Gaskill argues that his trial lawyer was ineffective for failing to pursue an insanity defense. We conclude that his trial lawyer's decision to forego an insanity defense was reasonable under the facts of this case. Because defendant has not identified any error warranting relief, we affirm.

Defendant's various convictions arise from an October 2008 incident in Farwell, Michigan. On the night at issue, defendant broke into a home, abducted an 11-year-old girl at knife-point, forced her to his home, and sexually assaulted her.

Because the trial court did not hold an evidentiary hearing on this issue, our review is limited to mistakes that are apparent in the record. *People v Payne*, 285 Mich 181, 188; 774 NW2d 714 (2009). To establish a claim of ineffective assistance of counsel, defendant must show that his trial lawyer's "performance was below an objective standard of reasonableness under prevailing professional norms and there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). A trial lawyer's failure to prepare a *meritorious* insanity defense may fall below an objective standard of reasonableness under prevailing professional

norms. See *People v Parker*, 133 Mich App 358, 363; 349 NW2d 514 (1984). However, this is not such a case.

There was strong evidence in the record that defendant did not have a meritorious insanity defense. Defendant's trial lawyer petitioned for defendant to be referred for psychiatric evaluation to determine whether he was criminally responsible for the charged offenses. The crux of defendant's petition was that a voice named "Jim" either committed the offenses or made defendant commit them. The psychologist that evaluated defendant opined that his description of the voice was "highly consistent with unsophisticated malingering." The psychologist came to this opinion, in part, on the basis of defendant's fluctuation between describing psychosis and dissociative identity disorder, two separate mental illnesses. The psychologist also considered defendant's mental health history and the context in which the offenses occurred. Defendant had previously been treated on an outpatient basis for bipolar disorder; however, his symptoms were contained and not severe. He also denied being suicidal.

In addition, there was evidence that defendant acted deliberately and with an appreciation that his actions were wrongful throughout the events at issue. When confronted during a break-in on the same night, defendant apologized and quickly left the home. Similarly when defendant approached a woman on her porch, he backed off once he realized she was not alone. And, throughout the commission of the charged offenses, defendant took multiple steps to avoid detection. He instructed the victim not to scream, hid her behind bushes whenever cars passed, changed his own clothes, kept her underwear, had her shower three times, discarded the knife used in the assault and kidnapping, and stopped chasing her after she fled when he saw that the victim was running towards police officers. As the psychologist noted, these actions "were organized, goal directed, and sustained over time. There is no suggestion whatsoever that Mr. Gaskill was experiencing an episode of acute mental illness that was substantially impairing his ability to recognize the wrongfulness of his behavior and control it accordingly." Finally, although defendant had consumed a considerable amount of alcohol, he could not present an insanity defense premised on voluntarily intoxication. See MCL 768.21a(2).

Because there was substantial evidence discounting defendant's claim of insanity, a reasonable trial lawyer could conclude that pursuing the insanity defense was counterproductive and, for that reason, abandon any reliance on it. As such, we must presume that defendant's trial lawyer's decision to abandon the insanity defense after defendant's evaluation fell within the range of reasonable professional conduct. See *People v Gioglio (On Remand)*, ___ Mich App ___, slip op at 5; ___ NW2d ___ (2012) (Docket No. 293629, released March 20, 2012) (noting that courts presume that a defendant's trial lawyer's act or omission "fell within the range of reasonable professional conduct if, after affirmatively entertaining the range of possible reasons for the act or omission under the facts known to the reviewing court, there might have been a legitimate strategic reason for the act or omission.").

There were no errors warranting relief.

Affirmed.

/s/ Jane E. Markey
/s/ Jane M. Beckering
/s/ Michael J. Kelly