

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 201535

Jackson Circuit Court

JACK CALVIN McDONNELL,

LC No. 95-74346 FH

Defendant-Appellant.

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Before: Sawyer, P.J., and Kelly and Doctoroff, JJ.

KELLY, J. (dissenting).

I respectfully dissent.

First, I would remand for an evidentiary hearing on defendant's claim of ineffective assistance of counsel because it does not appear from the record that trial counsel adequately investigated or presented a proper defense. For instance, apparently defense counsel failed to request an independent psychiatric examination. Such an oversight may well have deprived defendant of a substantial defense, *People v Hoyt*, 185 Mich App 531, 537-538; 462 NW2d 793 (1990); *People v Julian*, 171 Mich App 153, 158-159; 429 NW2d 615 (1988), because it appears obvious that defendant was mentally ill at the time he committed the instant offense.

When the crimes were committed defendant was in the psychiatric unit of the Duane Waters prison hospital, in four point restraints with a twenty-four-hour guard. One arm was released from restraints so that he could write the letters in question. A guard stood over defendant as he wrote the letters to prevent him from stabbing himself with a pencil. Historically, defendant had been hospitalized on over a hundred prior occasions for self-mutilation and had a history of mental illness dating back to his youth.

Given defendant's obvious mental illness, defendant's investigation and presentation of an insanity defense might well have made a difference in the outcome at trial. *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). In my opinion, there is enough merit in defendant's claims of ineffective assistance of counsel to warrant an evidentiary hearing.

Additionally, I believe the trial court reversibly erred in refusing to give a guilty but mentally ill jury instruction. Although Dr. Wightman testified that defendant was not mentally ill, there was clearly evidence on the record, such as is set forth above, including defendant's own testimony, to indicate that defendant was mentally ill at the time he committed the instant offense. Where there is evidence, as in this case, to support a defense instruction, the trial court is obliged to so instruct. *People v Caulley*, 197 Mich App 177, 184; 494 NW2d 853 (1992). The trial court's failure to do so in this case was reversible error.

I would reverse; but, at a minimum, I believe that this matter should be remanded for an evidentiary hearing on defendant's claims of ineffective assistance of counsel.

/s/ Michael J. Kelly