

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY LYNN WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

January 4, 2002

No. 223369

Tuscola Circuit Court

LC No. 81-004430

Before: K.F. Kelly, P.J., and Hood and Doctoroff, JJ.

PER CURIAM.

In 1982, defendant was convicted by a jury of two counts of first-degree murder, MCL 750.316. He was sentenced to two terms of life imprisonment without the possibility of parole. Defendant now appeals by leave granted the trial court's order denying his motion for relief from judgment. We affirm.

I. Basic Facts and Procedural History

Defendant was charged in the shooting deaths of his deceased wife's parents. At trial, the judge instructed the jury on first-degree murder, second-degree murder, voluntary manslaughter, and the elements of attempt to commit those offenses. While the jury was in deliberation, it requested to be re-instructed on the definitions of the charges. The trial court's instructions to the jury in response to plaintiff's request were identical to the instructions provided previously. Defense counsel did not object to the jury instructions.

Defendant appealed as of right to this Court and his conviction was affirmed. See *People v Williams*, 134 Mich App 639; 351 NW2d 878 (1984). Approximately four years after our Supreme Court denied leave, defendant moved for relief from judgment in the trial court claiming that the jury instructions were "faulty" and that he received ineffective assistance of counsel. Because the original transcripts were destroyed, and no records were presented to properly determine the validity of the motion, the trial court denied the relief requested. Defendant's motion for reconsideration was also denied. This Court granted defendant's delayed application for leave to appeal by order dated July 19, 2000.

II. Jury Instructions

Defendant first argues that the jury instructions in his 1982 trial allowed the jury to find defendant guilty of first-degree murder if the jury merely found, beyond a reasonable doubt, that defendant intended bodily harm, or knowingly created a very high risk of death, knowing that his actions would likely result in death or harm.¹

A claim of instructional error is reviewed de novo. *People v Bartlett*, 231 Mich App 139, 143; 585 NW2d 341 (1998). This Court reviews jury instructions in their entirety to determine if the trial court made an error requiring reversal. *People v Caulley*, 197 Mich App 177, 184; 494 NW2d 853 (1992).

In the instant case, the trial judge did instruct the jury that for *first-degree* murder the prosecution must prove, beyond a reasonable doubt, the four elements of *second-degree* murder previously described to the jury. But, for first degree murder, the trial court also instructed that the prosecution must establish, beyond a reasonable doubt, a fifth element; specifically, that the death was the willful result of a premeditated deliberate intent to kill. Additionally, the trial judge defined “premeditated” and “deliberate” intent to kill for the jury. Consequently, the trial court’s failure to define the requisite intent for first-degree and second-degree murder separately and independently was not error. Further, the trial court’s identification and definitions of “premeditated” and “deliberate,” sufficiently differentiated the general intent required for second-degree murder and the specific intent required for first-degree murder. Accordingly, the trial court’s instructions to the jury were indeed proper.

III. Ineffective Assistance Counsel

Defendant argues next that trial counsel committed error by twice² failing to object to the disputed jury instructions regarding first-degree and second-degree murder, and that he was similarly denied effective assistance of appellate counsel when counsel failed to appeal the disputed instructions during defendant’s initial appeal in 1984. This Court reviews de novo a claim alleging ineffective assistance of counsel. *People v Toma*, 462 Mich 281, 310; 613 NW2d 694 (2000). Pursuant to *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973), claims for ineffective assistance of counsel should be raised by a motion for a new trial or evidentiary hearing. Since defendant did not procure a ruling by the trial court on this issue, defendant’s claim for the ineffective assistance of counsel is forfeited save for a review of the existing record.

¹ Defense counsel did not object to the jury instructions. Consequently, this issue was not properly preserved for appellate review. However, because defendant is alleging a violation of his constitutional rights, we review this issue for plain error. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). To prevail, the defendant must demonstrate plain error that was outcome determinative. *Id.* at 763.

² Defendant argues that trial counsel should have objected to the jury instructions the first time that the trial court rendered the instructions and again when the jury requested to be re-instructed on the definitions of the charges during deliberations.

People v Snider, 239 Mich App 393, 423; 608 NW2d 502 (2000). To set forth a viable claim for the ineffective assistance of counsel, defendant must establish deficient performance by counsel and a reasonable probability that but for that deficiency, the result would have been different. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999) citing *People v Johnson*, 451 Mich 115; 545 NW2d 637 (1996); *Snider*, *supra* at 423-424.

Because we find that the jury instructions were proper, defendant's trial counsel was under no duty to object to them, nor was defendant's appellate counsel bound to raise the error on appeal. Indeed, counsel is not rendered ineffective for failing to raise meritless objections or claims. *People v Torres (On Remand)*, 222 Mich App 411, 425; 564 NW2d 149 (1997).

IV. Motion For Relief From Judgment

Finally, defendant claims that he was denied his constitutional right to access the courts because the trial court denied his motion for relief from judgment based on the unavailability of the original trial transcripts. This Court reviews a trial court's denial of relief from judgment for an abuse of discretion. *People v Ulman*, 244 Mich App 500, 508; 625 NW2d 429 (2001).

To obtain relief from judgment, defendant must show "good cause" exists for failure to raise the new grounds on appeal and actual prejudice. MCR 6.508(D)(3)(a). Failing to raise issues of ineffective assistance of counsel does not necessarily establish "good cause." See *People v Reed*, 198 Mich App 639; 499 NW2d 441 (1993) (declining to find the requisite "good cause" necessary for defendant to obtain relief from judgment where the defendant, eight years after he appealed his conviction, labeled his appellate counsel "ineffective."). Upon review of the record, neither trial counsel's nor appellate counsel's performance fell below an objective standard of reasonableness. Because defendant failed to demonstrate "good cause" as required by MCR 6.508(D)(3)(a), the trial court did not err by denying defendant relief from judgment.

Additionally, because this Court granted leave, defendant had his day in this Court. Thus, defendant's constitutional right to access courts was not infringed. *People v Gorka*, 381 Mich 515, 520; 164 NW2d 30 (1969). Defendant received from this Court a review similar to that which he would have received in the trial court. *Id.* The fact that defendant encountered a detour by being denied relief at the trial court level does not compel this Court to grant him a new trial. *Id.*

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Harold Hood
/s/ Martin M. Doctoroff