

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CAROLYN E. WINFREY,

Defendant-Appellant.

UNPUBLISHED

November 25, 2003

No. 240855

Wayne Circuit Court

LC No. 01-009670-01

Before: Owens, P.J., and Fitzgerald and Saad, JJ.

PER CURIAM.

A jury found defendant guilty but mentally ill on one count each of bank robbery, MCL 750.531, and felonious assault, MCL 750.82. The trial court sentenced defendant to ten to twenty five years' imprisonment on the bank robbery conviction and one to four years' imprisonment on the felonious assault conviction. Defendant appeals as of right. We affirm.

Defendant contends that she was denied her right of allocution during the sentencing hearing. We review de novo whether the trial court properly afforded a defendant his or her right to allocute. See *People v Petty*, 469 Mich 108, 113; 665 NW2d 443 (2003); *People v Petit*, 466 Mich 624, 626-627; 648 NW2d 193 (2002).

A trial court must, on the record, "give the defendant . . . an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence." MCR 6.425(D)(2)(c). In *People v Westbrook*, 188 Mich App 615, 617-618; 470 NW2d 495 (1991), we explained that a defendant must be given a reasonable opportunity to address the trial court before the trial court imposes the sentence. Here, defendant was given an opportunity to address the trial court before it imposed the sentence.

In fact, the gravamen of defendant's argument is that the trial court did not permit her to respond to statements that defendant apparently considered erroneous. But we note that the trial court's commentary on defendant's use of her medication was consistent with the facts presented at trial, as well as the facts contained in the presentence investigation report. Indeed, defendant has never contended that a failure to take her medication contributed to her criminal behavior. Further, although the trial court mistakenly stated that defendant had tried to set three women on fire, defendant nevertheless assaulted three women. Although defendant stabbed one of the women, rather than assaulting her with gasoline and matches, the trial court's primary concern was protecting society from defendant's dangerous behavior. Thus, we are not persuaded that

depriving defendant the opportunity to correct the trial court's minor error deprived her of a reasonable opportunity to address the trial court. See *id.* Consequently, we reject defendant's contention of error.

Defendant also contends that the trial court erred in denying her request to adjourn the sentencing hearing for a further psychological examination. We review a trial court's denial of a motion to adjourn for an abuse of discretion. *People v Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000). An abuse of discretion will be found only where "an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made." *Id.* at 419.

Generally, an adjournment will not be granted unless a defendant demonstrates good cause, diligence, and prejudice. *People v Coy*, 258 Mich App 1, 18-19; __ NW2d __ (2003). "'Good cause' factors include 'whether defendant (1) asserted a constitutional right, (2) had a legitimate reason for asserting the right, (3) had been negligent, and (4) had requested previous adjournments.'" *Id.* at 18, quoting *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 810 (1992). Here, defendant did not request the adjournment until the sentencing hearing commenced.

Further, defendant's only justification for a further psychological examination was that it could provide additional guidance for sentencing. But the record does not contain any evidence suggesting that another psychological examination would have resulted in a sentencing recommendation different from the trial court's sentence. In the absence of any indication in the record that an additional psychological examination would have had any impact on the outcome of the sentencing hearing, defendant's claim of error is wholly speculative. Therefore, the trial court did not abuse its discretion in denying defendant's request for an adjournment. *Snider, supra; Coy, supra.*

Affirmed.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad