

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TEDDIUS PATTERSON,

Defendant-Appellant.

UNPUBLISHED

October 11, 2011

No. 299065

Muskegon Circuit Court

LC No. 09-058152-FC

Before: MARKEY, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals by right his convictions of first-degree criminal sexual conduct, MCL 750.520b(1)(c), first-degree home invasion, MCL 750.110a(2), larceny of a firearm, MCL 750.357b, and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to concurrent sentences of 18 to 55 years' imprisonment for the first-degree criminal sexual conduct conviction; 8 to 20 years' imprisonment for the first-degree home invasion conviction, and 2 to 5 years' imprisonment for the larceny of a firearm conviction. These sentences are to be served consecutively to defendant's sentences of two years for each felony-firearm conviction. We affirm.

Defendant elected to have a bench trial on June 22, 2009, following which he was convicted for his actions. On that night, defendant entered the home of the victim. Defendant digitally penetrated the victim's vagina twice while in her home; the second penetration occurred at gunpoint. Between the two sexual assaults the victim retrieved a firearm from her closet; however, defendant was able to gain control of that weapon. Eventually the victim was able to run to a neighbor's house and call 911; defendant left the scene with the firearm, the victim's purse and its contents, the victim's cellular telephone, and an iPod. Later, the victim identified defendant out of a photographic array. Defendant turned himself in, waived his *Miranda*¹ rights, and implicated himself in the crime during an interview with police.

On appeal, defendant argues that he was denied the right to meaningful allocution at sentencing due to lack of competency. Because defendant did not raise the issue of his

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

competency before the trial court, we review defendant's claim of error for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764, 764; 597 NW2d 130 (1999). Defendant argues that the trial court should have sua sponte determined whether he was competent before proceeding with sentencing. Assuming without deciding that the same rights regarding competency at trial apply during sentencing, we find that the trial court did not plainly err in failing to sua sponte raise the issue of defendant's competency before proceeding with sentencing. Criminal defendants are presumed competent. MCL 330.2020(1). The issue of competency may be raised by either party or the court; however, the trial court has a duty to raise the issue of competency when facts are brought to its attention which raise a "bona fide doubt" regarding the defendant's competence. MCL 330.2024; *People v Johnson*, 58 Mich App 473, 475; 228 NW2d 429 (1975).

The facts in this case are not sufficient to raise a bona fide doubt regarding defendant's competency. Defendant argues that the trial court should have raised the issue of competency before proceeding with sentencing based on information contained in his presentence investigation report. The report indicates that defendant was diagnosed with attention deficit disorder and that he was diagnosed as educable mentally impaired and emotionally impaired. The report indicates that these impairments have "stunted" defendant's learning ability.

Defendant's competency was not questioned by either party at any point during the proceedings. Defendant elected not to allocate during sentencing; however, that decision does not necessarily indicate that defendant was incapable of allocution because of incompetency. A review of the trial transcript and the sentencing transcript does not reveal any unusual or inappropriate conduct or statements by defendant that would indicate his mental condition rendered him incapable of understanding the nature and object of the proceedings or of assisting in his defense in a rational manner. MCL 330.2020(1). Past cases finding that the competency of a defendant should have been sua sponte addressed by the trial court required significantly more facts suggesting incompetency than the present case. See, e.g., *People v Whyte*, 165 Mich App 409, 413-415; 418 NW2d 484 (1988) (finding competency should have been determined before the defendant's guilty plea when the defendant was diagnosed as having schizophrenic disorder, showed signs of depression, delusion, and hallucination, and was found disabled by the Social Security Income program). Cf. *Johnson*, 58 Mich App at 477-478 (finding that the trial court was not presented with facts raising a bona fide doubt about the defendant's competency when presentence report indicated "the emergence of a schizophrenic process"). Accordingly, we find that the trial court did not plainly err when it did not sua sponte determine whether defendant was competent before proceeding with sentencing because there were insufficient facts to create a bona fide doubt about defendant's competency.

We affirm.

/s/ Jane E. Markey
/s/ Deborah A. Servitto
/s/ Amy Ronayne Krause