

Order

APPENDIX - A

Michigan Supreme Court
Lansing, Michigan

March 30, 2021

Bridget M. McCormack,
Chief Justice

161748

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

KUSHAWN MILES-EL,
Plaintiff-Appellant,

SC: 161748
COA: 352357

CHIPPEWA CORRECTIONAL FACILITY
WARDEN,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the May 19, 2020 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 30, 2021

A handwritten signature of Larry S. Royster.

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Clerk

APPENDIX A-1

A Neutral
As of: July 30, 2021 5:18 PM Z

Miles-El v. Chippewa Corr. Facility Warden

Court of Appeals of Michigan

May 19, 2020, Decided

Docket No. 352357

Reporter

2020 Mich. App. LEXIS 3406 *

Kushawn Miles-El v Chippewa Correctional Facility
Warden

Subsequent History: Leave to appeal denied by *Miles-El v. Chippewa Corr. Facility Warden*, 956 N.W.2d 203, 2021 Mich. LEXIS 473, 2021 WL 1228100 (Mich., Mar. 30, 2021)

Prior History: *Miles-El v. Chippewa Corr Facility Warden*, 2020 Mich. App. LEXIS 2762 (Mich. Ct. App., Apr. 14, 2020)

Counsel: [*1] KUSHAWN MILES-EL, Plaintiff, Pro se.

For CHIPPEWA CORRECTIONAL FACILITY
WARDEN, Defendant: LANGSCHWAGER H. STEVEN.

Judges: Stephen L. Borrello, Presiding Judge. Amy Ronayne Krause, Brock A. Swartzle, Judges.

Opinion by: Stephen L. Borrello

Opinion

ORDER

The Court orders that the complaint for habeas corpus is DENIED.

/s/ Stephen L. Borrello

Presiding Judge

End of Document

APPENDIX - B

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

v.

Case No: 93-010422-01
Hon. Thomas E. Jackson

KUSHAWN MILES,

Defendant.

ORDER DENYING RELIEF FROM JUDGMENT

At a session of Court
held in the Frank Murphy Hall of Justice
in the City of Detroit, Wayne County,

ON: JUN 11 2002
PRESENT: Hon. Thomas E. Jackson
Circuit Court Judge

Defendant moves this court for relief from judgment pursuant to MCR 6.500 et seq. Defendant was convicted, following a jury trial, of first degree murder, MCL 750.316, two counts of possession of a firearm during the commission of a felony, MCL 750.227b, and assault with intent to do great bodily harm less than murder, MCL 750.84. He was sentenced to life in prison for the murder conviction, to run concurrent with the assault with intent to do great bodily harm conviction; and a two year term for the felony-firearm convictions.

Defendant first alleges that defects in the warrant and return meant that the district court never acquired jurisdiction over him for prosecution. This allegation is without

merit. A technical ministerial defect is not adequate grounds for reversing a valid conviction. *People v Twenty Five Thousand Five Hundred and Five Dollars and One 1986 Ford*, 220 Mich App 572 (1997); *People v Barkley*, 225 Mich App 539 (1996); *People v Myers*, 163 Mich App. 120 (1987). The warrant, the amended information and the return all conform to the requirements of the Constitution to acquire jurisdiction over this defendant.

The defendant complains that the trial court refused to allow his trial attorney to withdraw from representing him after the defendant filed a grievance against counsel for failing to visit him while incarcerated to consult on the case. An indigent defendant who receives the appointment of counsel at the government's expense is not entitled to an attorney of his choice. *People v Ginther*, 390 Mich 436, 441 (1973); *People v Mack*, 190 Mich App 7, 14 (1991). Although defendant's right to choose counsel is an essential element of the Sixth Amendment right to assistance of counsel, this right is not absolute. *People v Daniels*, 2002WL 77192 (Jan. 18, 2002); *People v. Krysztapaniec*, 170 Mich App 588, 598 (1988). Further, the defendant's right to alternate counsel is balanced with the public's interest in the prompt and efficient administration of justice in order to determine whether the defendant's right to choose counsel has been violated. *People v. Krysztapaniec*. A trial court's denial of substitute counsel is reviewed for an abuse of discretion and will not be overturned absent such abuse. *People v Daniels*, *supra*.

The trial court must consider the following factors in making this decision: (1) whether the defendant is asserting a constitutional right, (2) whether the defendant has a legitimate reason for asserting the right, such as a bona fide dispute with his attorney, (3) whether the defendant was negligent in asserting his right, (4) whether the defendant is

merely attempting to delay trial, and (5) whether the defendant demonstrated prejudice resulting from the trial court's decision. Appointment of substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. *People v Ginther*, 390 Mich 436, 441 (1973). In *People v Hernandez*, 84 Mich App 1, 7 (1978), the Court stated that "[t]here is no precise definition of good cause in the context of substitution of counsel, and the resolution of this issue must be found in the circumstances surrounding each case, particularly in the reasons presented to the trial judge at the time the request is made."

While it is clear that the relationship between defendant and his counsel was strained that alone does not establish a bona fide dispute. The record does not show an abuse of discretion in the trial court's refusal to substitute trial counsel. It is not uncommon for a defendant to file a grievance to try to force certain behavior from his attorney. This does not automatically require the end of the attorney/client relationship. The attorney that represented this defendant at trial was competent, effective and prepared for trial. The defendant has not demonstrated that he has suffered any prejudice as a result of his appointed counsel's representation as required by *Strickland v Washington*, 466 US 668 (1984).

The rest of the defendant's motion argues that his attorney should have presented the defense theory that the defendant was too intoxicated to form the requisite intent of premeditation and deliberation to sustain a first-degree murder conviction. He argues that his trial attorney was ineffective for failing to call alibi witnesses and allow the defendant to testify that he was very intoxicated by drugs and alcohol at the time of the

shooting. He also claims that his appellate counsel was ineffective for not bringing this issue on direct appeal.

The defendant's contention that the defense of intoxication would have resulted in a different result at trial is without merit. The Court of Appeals has previously ruled that there was sufficient evidence of premeditation and deliberation shown by his actions prior to and following the killing. The Court pointed to the facts that the defendant armed himself with a rifle, searched for the people he intended to shoot, attempted to conceal his identity with a bandana covering part of his face, and after the shooting told his friend that he had killed the decedent. This is ample evidence of premeditation and deliberation and the defendant's intoxication theory would have been insufficient to rebut those findings. No reasonable juror could have found that the defendant was too intoxicated to be cognizant of what he was doing when he armed himself, searched out his victim, concealed his identity and told his friend that he had killed the victim.

The defendant has failed to show that his trial attorney was ineffective for failing to present an intoxication defense, or that his appellate attorney was ineffective for failing to present on direct appeal a claim of ineffective assistance at trial. The required showing of prejudice has not been established because the defendant cannot show that but-for his trial attorney's failure to present an intoxication defense, the result of his trial would have been different.

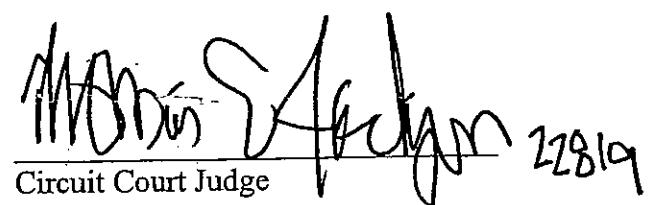
The defendant's motion for relief from judgment is DENIED for all the reasons stated above.

The defendant's motion for an evidentiary hearing on the issue of ineffective assistance of counsel is DENIED for failure to establish entitlement under MCR 6.508(D).

The defendant's Complaint for Malpractice and Request for Discovery are civil matters and are therefore returned without filing for improper venue.

IT IS SO ORDERED.

Dated: JUNE 11, 2002



Circuit Court Judge