STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 18, 2014
v	No. 309522 Oakland Circuit Court
FUAD FAROUK SHEENA, Defendant-Appellant.	LC No. 2011-237051-FC

Before: MURPHY, C.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant Fuad Farouk Sheena appeals of right his jury convictions of two counts of assault with intent to commit murder, MCL 750.83, and one count of assault with intent to do great bodily harm, MCL 750.84. The trial court sentenced him to serve 14 to 30 years in prison for each assault with intent to commit murder conviction and to serve three to 10 years in prison for his assault with intent to do great bodily harm conviction. Because we conclude there were no errors warranting relief, we affirm.

Sheena's convictions arise from a domestic incident. Testimony and evidence established that he attacked his sister with a small knife and hammer. He then turned on his parents after they tried to intervene.

On appeal, Sheena first argues that the trial court erred when it precluded him from presenting expert testimony regarding his mental illness. This Court reviews a trial court's evidentiary decisions for an abuse of discretion. *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010).

In the present case, two doctors examined Sheena before trial and determined that he was not legally insane at the time of the charged acts and Sheena elected not to pursue an insanity defense at trial. Although he chose not to present an insanity defense, he nevertheless argues that he should have been permitted to present expert testimony concerning his mental health to prove that he could not form the specific intent necessary to commit the charged offenses. But our Supreme Court has specifically held that a defendant who does not meet the requirements stated under MCL 768.21a cannot present evidence of mental illness to negate the specific intent element of a crime. *People v Carpenter*, 464 Mich 223, 236; 627 NW2d 276 (2001); see also *People v Yost*, 278 Mich App 341, 354-355; 749 NW2d 753 (2008) (recognizing that the Court in *Carpenter* held that a defendant cannot "offer evidence of a lack of mental capacity for the purpose of avoiding or reducing criminal responsibility by negating the intent element of an

offense," but stating that evidence of mental capacity may be admissible for purposes other than to negate specific intent). Such evidence is precluded because "the insanity defense as established by the Legislature is the sole standard for determining criminal responsibility as it relates to mental illness or retardation." *Carpenter*, 464 Mich at 239. The comprehensive statutory scheme concerning the insanity defense is intended to "preclude the use of *any* evidence of a defendant's lack of mental capacity short of legal insanity to avoid or reduce criminal responsibility by negating specific intent." *Id.* at 235 (emphasis in original).

The trial court did not abuse its discretion when it precluded Sheena from presenting evidence about his mental health to negate the specific intent element of the charged offense.[1]

Next, Sheena claims that he is entitled to remand to the trial court for a new trial based on newly discovered evidence. Specifically, he argues that recent changes to the diagnostic criteria for schizophrenia and psychosis constitute newly discovered evidence that warrants a new trial. In order to warrant a new trial on the basis of newly discovered evidence, a defendant must show that: (1) the evidence itself, not merely its materiality, was newly discovered; (2) the newly discovered evidence was not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial. *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003).

Sheena has not presented any evidence that the purported changes to the criteria for diagnosing schizophrenia or psychosis would have altered the medical opinions concerning his legal sanity at the time of the incident. Because he has not established that the changes made a "different result probable on retrial," he has not established a basis for relief. *Id.*

Sheena next claims that the trial court improperly admitted evidence that he threatened his sister in 2006. However, his lawyer expressly approved the admission of the testimony at issue; as such there is no error to review. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (stating that a defendant's lawyer's expression of satisfaction with the trial court's decision constitutes a waiver that extinguishes any error).

Finally, Sheena argues that the trial court erred by refusing to instruct the jury using a criminal jury instruction—CJI2d 17.4—that addresses mitigating circumstances. This Court generally reviews claims of instructional error de novo; however, it reviews for an abuse of discretion a trial court's determination that a particular instruction is inapplicable under the facts. *People v Hartuniewicz*, 294 Mich App 237, 242; 816 NW2d 442 (2011). A defendant's request for a jury instruction on a theory or defense must be granted if supported by the evidence. *People v McKinney*, 258 Mich App 157, 163; 670 NW2d 254 (2003).

[1] Sheena also invites this Court to disregard the decision in *Carpenter* because it was incorrectly decided. We reject his invitation; this Court has no authority to ignore or revise our Supreme Court's decisions. See *People v Armisted*, 295 Mich App 32, 53; 811 NW2d 47 (2011).

In the present case, Sheena has not established that there were facts to support his mitigation theory. And, contrary to Sheena's assertion, the trial court properly explained the intent element of the crime of assault with intent to murder to the jury. Consequently, the trial court did not err when it refused to give the requested instruction.

There were no errors warranting relief.

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause