Order

Michigan Supreme Court
Lansing, Michigan

September 21, 2022

163653

Bridget M. McCormack,
Chief Justice

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 163653
COA: 355427
Cass CC: 17-010215-FC
18-010004-FC

JASON SCOTT RYANS,
Defendant-Appellant.

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By order of December 22, 2021, the prosecuting attorney was directed to answer the application for leave to appeal the September 23, 2021 judgment of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE the July 17, 2020 and the July 20, 2020 orders of the Cass Circuit Court and we REMAND this case to that court. On remand, the trial court shall reconsider the defendant's request to file a notice of insanity and his request for an examination at the Center for Forensic Psychiatry pursuant to MCL 768.20a(2) and MCL 768.21a(1). In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.

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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.

September 21, 2022

Clerk

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 23, 2021
v	No. 355427 Cass Circuit Court LC Nos. 17-010215-FC; 18-010004-FC
JASON SCOTT RYANS, Defendant-Appellant.	

Before: CAVANAGH, P.J., and K. F. KELLY and REDFORD, JJ.

PER CURIAM.

In this interlocutory appeal, defendant appeals by delayed leave granted[1] the trial court's order denying defendant's "Motion For Forensic Examination To Determine Competency To Stand Trial," and its order denying defendant's "Motion to File Notice of Insanity Defense." On appeal, defendant argues, *in propria persona* and in a supplemental brief filed by counsel,[2] that the trial court violated his due-process rights and his right to adequately prepare a defense when it denied his request to appoint a psychiatrist to determine the validity of an insanity defense and a psychologist to aid him in challenging the voluntaries of confessions that he made to law enforcement. We affirm.

> We review de novo, as an issue of constitutional law implicating a defendant's due-process rights, the trial court's grant or denial of a defendant's request for state funds to retain an expert. We must consider whether, in light of defendant's explanation as to why the requested expert was necessary for his

[1] *People v Ryans*, unpublished order of the Court of Appeals, entered December 23, 2020 (Docket No. 355427).

[2] Defendant filed his initial brief on appeal *in propria persona*. The trial court subsequently appointed the State Appellate Defender's Office as appellate counsel. That office then moved for leave to file a supplemental brief. This Court granted the motion. *People v Ryans*, unpublished order of the Court of Appeals, entered June 25, 2021 (Docket No. 355427).

> defense, the trial court should have determined that state funds were required to afford defendant a fair opportunity to confront the prosecution's evidence and present his defense. [*People v Propp*, 330 Mich App 151, 159-160; 946 NW2d 786 (2019) (citation omitted).]

For many years, our nation's courts have sought to protect the constitutional rights of indigent criminal defendants. In *Ake v Oklahoma*, 470 US 68, 76; 105 S Ct 1087; 84 L Ed 2d 53 (1985), the United States Supreme Court explained when a state must provide an indigent defendant an expert psychiatrist to help prepare a defense. The Court explained as follows:

> This Court has long recognized that when a State brings its judicial power to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his defense. This elementary principle, grounded in significant part on the Fourteenth Amendment's due process guarantee of fundamental fairness, derives from the belief that justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake. [*Id.*]

The Court then adopted a three-factor test that courts must use when determining whether "a psychiatrist is important enough to preparation of a defense to require the State to provide an indigent defendant with access to competent psychiatric assistance in preparing the defense." *Id.* at 77. It explained the factors as follows:

> The first is the private interest that will be affected by the action of the State. The second is the governmental interest that will be affected if the safeguard is to be provided. The third is the probable value of the additional or substitute procedural safeguards that are sought, and the risk of an erroneous deprivation of the affected interest if those safeguards are not provided. [*Id.*]

In 2018, in *People v Kennedy*, 502 Mich 206, 213-216; 917 NW2d 355 (2018), our Supreme Court adopted the above-quoted language and the test from *Ake*. At the same time, our Supreme Court explained that *Ake*'s due-process analysis is not limited to psychiatric experts or to capital cases. *Id.* at 219-220. The *Kennedy* Court went further, adopting a "reasonable probability" test to explain a defendant's burden in such cases. It explained as follows:

> Although *Ake* governs requests by an indigent criminal defendant for the appointment of an expert at government expense, the Supreme Court has not explained how this showing must be made. This question is critical. Until an expert is consulted, a defendant might often be unaware of how, *precisely*, the expert would aid the defense. If, in such cases, the defendant were required to prove in detail with a high degree of certainty that an expert would benefit the defense, the defendant would essentially be tasked with the impossible: to get an expert, the defendant would need to already know what the expert would say. At the same time, the defendant's bare assertion that an expert would be beneficial cannot, without more, entitle him or her to an expert; otherwise, every defendant would receive funds for experts upon request. [*Id.* at 225-226 (citations omitted).]

Accordingly, our Supreme Court held that " 'a defendant must show the trial court that there exists a reasonable probability both that an expert would be of assistance to the defense and that denial of expert assistance would result in a fundamentally unfair trial.' " *Id.* at 228, quoting *Moore v Kemp*, 809 F2d 702, 712 (CA 11, 1987).

First, we affirm the trial court's denial of defendant's motion to allow funds for an expert psychologist. Although the trial court incorrectly analyzed this issue, we are satisfied with the result. See *People v Gonzales*, 179 Mich App 477, 478; 446 NW2d 296 (1989) (explaining that this Court may affirm if the trial court reached the right result but for the wrong reasons). The trial court partially analyzed this question under MCR 6.125, as if defendant was seeking a competency exam. Neither of defendant's relevant motions mentions a competency exam. We also note that the trial court did not address MCL 768.20a, which governs the insanity defense. However, defendant has not shown "that there exists a reasonable probability both that an expert would be of assistance to the defense and that denial of expert assistance would result in a fundamentally unfair trial." *Kennedy*, 502 Mich at 228. Defendant merely asserts, without any evidence, that he suffers from a variety of mental illnesses that caused him to be legally insane at the time of his alleged offenses. He merely asserts, without any evidence, that his "documented health issues" will be a "significant factor at trial." "[T]he defendant's bare assertion that an expert would be beneficial cannot, without more, entitle him or her to an expert; otherwise, every defendant would receive funds for experts upon request." *Id.* at 226. Although MCL 768.20a provides that a court "may, upon showing of good cause," grant monies for an independent psychiatric evaluation of an indigent defendant, defendant wholly fails to show good cause beyond an unsupported assertion that he suffers from various mental illnesses.

We also affirm the trial court's denial of funds for an expert psychologist. Defendant maintained that an expert psychologist was required to assist him in arguing that he made false confessions to law enforcement. The trial court's reasoning—that a psychologist who was not involved in treating defendant's alleged mental illnesses and only reviewing his records after the alleged crimes could not be helpful to the jury—was erroneous. In *People v Kowalski*, 492 Mich 106, 126; 821 NW2d 14 (2012), our Supreme Court explained that "expert testimony bearing on the manner in which a confession is obtained and how a defendant's psychological makeup may have affected the defendant's statements is beyond the understanding of the average juror and may be relevant to the reliability and credibility of a confession." Nevertheless, reversal is not warranted. See *Gonzales*, 179 Mich App at 478. Defendant's argument fails because he provides no more than a bare assertion that mental illness caused him to make involuntary statements to law enforcement. See *Kennedy*, 502 Mich at 226, 228.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ James Robert Redford