

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 13, 2012

v

DARRIO DAQUAIN PEGUES,
Defendant-Appellant.

No. 307451
Wayne Circuit Court
LC No. 11-007315-FC

Before: JANSEN, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of unarmed robbery, MCL 750.530. Defendant was sentenced to two years' probation for his conviction. We affirm.

Defendant argues that he was denied the right to a meaningful sentencing allocution due to lack of competency. We disagree.

“To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, and 3) the plain error affected substantial rights.” *People v Carines*, 460 Mich 750, 763–764; 597 NW2d 130 (1999). “Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error “seriously affected the fairness, integrity or public reputation of judicial proceedings ‘independent of defendant’s innocence.’” *Id.*, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993).

Defendant contends that the trial court should not have proceeded with sentencing until defendant’s psychiatric evaluation was completed. The prosecution contends that there is no bona fide doubt regarding defendant’s competence at sentencing. The prosecution also contends that the trial court did not abuse its discretion in conducting defendant’s sentencing.

Criminal defendants are presumed competent. MCL 330.2020(1); *People v Mette*, 243 Mich App 318, 331; 621 NW2d 713 (2000). “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 raises a ‘bona fide doubt’ regarding the defendant’s competence.” MCL 330.2024; *People v Johnson*, 58 Mich App 473, 475; 228 NW2d 429 (1975).

Defendant was granted a meaningful sentencing allocution. Defendant does not claim that he is, in fact, incompetent. However, defendant argues that the trial judge erred in sentencing him prior to a psychiatric evaluation. The trial court did not plainly err when it failed, sua sponte, to determine whether defendant was competent before proceeding with sentencing because there were insufficient facts to create a bona fide doubt about defendant's competency. During the trial, defendant did not raise the issue of incompetence orally or by motion. Also, there is nothing in the record suggesting that defendant is incompetent. A review of defendant's trial transcript and sentencing transcript did 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. Moreover, defendant's receipt of Social Security benefits does not rise to the level of bona fide doubt that defendant is incompetent because there are multiple explanations for an individual's receipt of Social Security benefits. The receipt of Social Security benefits for a purported "mental issue" does not suggest that defendant is necessarily incompetent.

In addition, defendant had an opportunity to exercise his right to allocute at sentencing. "[A] defendant must be allowed to exercise his right of allocution *before* sentence is imposed." *People v Parks*, 183 Mich App 647, 649; 455 NW2d 368 (1990). "[W]here a trial court indicates, prior to allocution, that it has already determined the sentence it is going to impose, any subsequent allocution is rendered meaningless and resentencing is required." *Id.* The trial court asked defendant whether he wanted to say something. Defendant replied, "No. I'm sorry for, your honor." In addition, there is no indication that the judge determined a sentence prior to sentencing. Thus, defendant exercised his right of allocution before sentencing.

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Karen M. Fort Hood