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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 21, 2026 10:08 AM
v	No. 372370 Wayne Circuit Court
ANTHONY WESLEY TYLER, Defendant-Appellant.	LC No. 22-000790-01-FC

Before: MURRAY, P.J., and BOONSTRA and RIORDAN, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of kidnapping, MCL 750.349; extortion, MCL 750.213; unlawful imprisonment, MCL 750.349b; assault with intent to do great bodily harm (AWIGBH), MCL 750.84; possession of a firearm by a felon (felon-in-possession), MCL 750.224f; assault with a dangerous weapon (felonious assault), MCL 750.82; and six counts of carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant, as a fourth-offense habitual offender, MCL 769.12, to serve concurrent terms of 38 to 60 years in prison for kidnapping, 12 to 20 years for extortion, 10 to 15 years for unlawful imprisonment, 6 to 10 years for AWIGBH, 3 to 5 years for felon-in-possession, and 2 to 4 years for felonious assault, all consecutive to concurrent 2-year terms for each felony-firearm conviction. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

On the night of November 20, 2021, 15-year-old KB met up with defendant's daughter, 16-year-old ZG. KB and ZG had been messaging on Instagram for about two weeks. Two of KB's friends dropped him off at ZG's home in Detroit. KB did not think anyone else was home. ZG invited him in, and they had sex. While KB was getting redressed, Lanisha Williams entered the room. Williams attempted to hit KB with a tall, metal fan that she was holding. KB ran out of the home, leaving behind several personal items in ZG's room.

KB later texted ZG to ask if she was okay and to get his items back. The text message he received in response said, "You f***ing with your life bro, act like she don't exist. Lost [sic] her number, you ain't getting s*** back, bro. Get over it." The next morning, KB received a text with

a photograph of his items, and another text asking if KB had taken defendant's gun. KB responded that he had not taken the gun.

A friend gave KB a ride back to ZG's home to retrieve his items. When they arrived, KB initially got out of the car. However, he felt something was off and returned to the car. KB then saw two cars pull up and block his friend's car. Defendant approached KB with a handgun. Several men exited the cars, also holding weapons. KB tried to run, but one of the men caught him and forced him to go into the home. KB's friend was allowed to leave after someone took a picture of the friend's license plate and car.

Inside the home, defendant asked KB several times if he had stolen defendant's gun the previous night. He also accused KB of stealing jewelry from the home. Defendant hit KB in the eyebrow with the butt of his gun, causing KB to bleed. KB received calls to his cell phone, which led to defendant taking the cell phone. Defendant spoke with KB's father, brother, and mother, and he insisted that he be paid $1,500 for the items that KB had allegedly stolen. He later increased this amount to $2,000. After speaking with defendant, KB's mother contacted the police and directed them to defendant's home based on tracking information from KB's cell phone. At defendant's direction, the other men took KB to the basement and punched and kicked him several times.

KB had been in defendant's home for approximately four hours when defendant released him after the police arrived. KB was taken to the hospital and diagnosed with an acute closed head injury, an acute forehead hematoma, acute blunt-force abdominal trauma, and acute chest wall pain. Defendant was arrested and later convicted and sentenced as described. This appeal followed.

II. SENTENCING

Defendant argues that his within-guidelines sentence was disproportionate. We disagree.

A. STANDARD OF REVIEW

This Court reviews challenges to the proportionality of a sentence for an abuse of discretion. *People v Boykin*, 510 Mich 171, 182; 987 NW2d 58 (2022). "A trial court abuses its discretion when it imposes a sentence that is not proportional to the seriousness of the circumstances surrounding the offense and the offender." *People v Sabin*, 242 Mich App 656, 661; 620 NW2d 19 (2000).

B. ANALYSIS

"[A] trial court has been given broad discretion, within limits fixed by law, to tailor a sentence to the circumstances of each case and each offender, in an effort to balance society's need for protection against its interest in rehabilitation of the offender." *Id*. The trial court may consider factors such as reformation, protection of society, punishment, and deterrence. *Id*. at 661-662. However, these are not the only relevant criteria, and the trial court is not required to consider each of these factors. *Boykin*, 510 Mich at 183-184. When sentencing on a felony conviction, the trial court uses the sentencing guidelines to determine "where, within the range of the least to the most

serious situations, a specific case falls and sentencing according to this determination." *Sabin*, 242 Mich App at 662.

Even if a trial court imposes a sentence within the guidelines, this Court "must review all sentences for reasonableness" and "consider whether the sentence is proportionate to the seriousness of the matter." *People v Posey*, 512 Mich 317, 352; 1 NW3d 101 (2023) (opinion by BOLDEN, J.).[1] But the defendant must overcome the presumption that the sentence was reasonable. *Id*. at 357. In other words, the defendant must demonstrate "unusual circumstances that would render the presumptively proportionate sentence disproportionate." *People v Ventour*, 349 Mich App 417, 430; 27 NW3d 660 (2023) (quotation marks and citation omitted). "Unusual" is defined as "uncommon, not usual, rare." *Id*. (quotation marks and citation omitted). The trial court my consider "(1) the seriousness of the offense; (2) factors that were inadequately considered by the guidelines; and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation." *Id*. (quotation marks and citation omitted).

In this case, defendant only challenges his sentence of 38 to 60 years' imprisonment for his kidnapping conviction. A 38-year (456-month) minimum sentence is within the statutory guidelines of 171 to 570 months.[2] But defendant has not presented any unusual circumstances that would render the sentence disproportionate. The crime was particularly severe—defendant kidnapped a child, took his phone, and then beat him and held him at gunpoint. The fact that KB had slept with defendant's daughter and allegedly stolen his property the night before the crime explains defendant's motive, but it does not justify or mitigate the brutality of the offense. As the trial court noted at sentencing, "this was a completely unnecessary crime."

Rather than argue that the trial court overlooked unusual circumstances, defendant merely argues that the trial court excessively focused on punishment as opposed to other sentencing factors. The record belies this argument—the trial court clearly considered the seriousness of the offense, noting the significant size and age difference between defendant and KB, and it found that defendant was "not a changed man" after his three previous felonies, that he had expressed "zero remorse" for the crime, and that he was "a great danger to society." In any event, the trial court was not required to consider all the possible sentencing factors, see *Boykin*, 510 Mich at 183-184, nor was it required to "expressly explain why a within-guidelines sentence is reasonable and

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[1] The prosecution argues that Justice BOLDEN's plurality opinion in *Posey* is not binding precedent. But this Court has already addressed *Posey*'s precedential value and determined that, "in the interest of judicial economy and jurisprudential stability," it would apply "the essential holdings upon which a *Posey* majority agreed" when reviewing challenges to within-guidelines sentences. *People v Purdle*, 350 Mich App 446, 454; 32 NW3d 479 (2024). This includes the principle that this Court will review a within-guidelines sentence for proportionality and that the sentence is presumed proportional. *Id*. at 455. See also *People v Brcic*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket Nos. 362727 and 366230), slip op at 10 n 8 ("Our Court . . .treats the principles announced in Justice BOLDEN's lead opinion as controlling.").

[2] Defendant does not challenge the assessment of his guidelines range.

proportionate." *People v Posey (On Remand)*, 349 Mich App 199, 207; 27 NW3d 137 (2023). Therefore, the trial court did not abuse its discretion when it sentenced defendant.

III. STANDARD 4 BRIEF

In his Standard 4 brief,[3] defendant raises additional issues regarding judicial misconduct, prosecutorial misconduct, and ineffective assistance of trial counsel. With the exception of defendant's challenge to his appellate counsel's effectiveness, all these issues are unpreserved because defendant did not raise them in the trial court. See *People v Jackson*, 292 Mich App 583, 597; 808 NW2d 541 (2011) (judicial misconduct); *People v Evans*, 335 Mich App 76, 88; 966 NW2d 402 (2020) (prosecutorial misconduct); *People v Head*, 323 Mich App 526, 538-539; 917 NW2d 752 (2018) (ineffective assistance of trial counsel);[4] *People v Lopez*, 305 Mich App 686, 693; 854 NW2d 205 (2014) (ineffective assistance of appellate counsel). We address each argument in turn.

A. JUDICIAL MISCONDUCT

Defendant argues that the trial court judge denied him a fair trial. We disagree.

"The question whether judicial misconduct denied defendant a fair trial is a question of constitutional law that this Court reviews de novo." *People v Stevens*, 498 Mich 162, 168; 869 NW2d 233 (2015). Unpreserved claims of judicial bias are reviewed for plain error affecting substantial rights. *Jackson*, 292 Mich App at 597.

"A defendant must overcome a heavy presumption of judicial impartiality when claiming judicial bias." *People v Willis*, 322 Mich App 579, 588; 914 NW2d 384 (2018). The trial judge deprives a defendant of a fair trial when his actions "pierce[] the veil of judicial impartiality." *Id*. The veil has been pierced when, in light of all the circumstances, "it is reasonably likely that the judge's conduct improperly influenced the jury by creating the appearance of advocacy or partiality against a party." *Stevens*, 498 Mich at 171. This Court must conduct a fact-specific analysis to determine if judicial misconduct or bias occurred. *Id*. In doing so, we review the totality of the circumstances. *Id*. at 172.

Defendant alleges that the trial judge erred by answering his cell phone during the trial, leaving the bench in the jury's presence, and later holding defense counsel in contempt after an alleged argument about the judge's inattentiveness. The record indicates that a cell phone rang while defense counsel was questioning a witness. Defense counsel laughed and said, "please silence all cell phones during the proceedings." The trial court responded, "Thank you, counsel, for your help. Alright go ahead." It is not even clear that it was the judge's cell phone that rang,

[3] Administrative Order No. 2004-4, 471 Mich civ (2004).

[4] A defendant may also preserve a claim of ineffective assistance by moving this Court to remand for a new trial and evidentiary hearing. *People v Abcumby-Blair*, 335 Mich App 210, 227; 966 NW2d 437 (2020). Defendant attempted to bring such a motion, but this Court rejected the filing because he did not file the motion through his appointed counsel.

but even if it were, there is nothing to indicate that the judge answered the call, and defense counsel quickly resumed his questioning without missing a beat.

The next day of trial, the trial judge briefly left the bench:

> *The Court*: —uh, 1, 1 through 103 and 108 through 119. If you can show [the witness] all of those photos and have her look at those please.
>
> [*Prosecution*]: Absolutely. One moment, Judge.
>
> [*Defense counsel*]: He's gone. He walked off.
>
> [*Prosecution*]: For the record I'm showing People's Exhibit 1.
>
> [*Defense counsel*]: Mr. Carter, can you wait until the judge come [sic] back on the bench.
>
> [*Prosecution*]: Sure. I'll do it again. Ms. Sheridan, you can go through 'em. One by one. As long as it takes.
>
> [*Defense counsel*]: Now—
>
> [*Prosecution*]: And, Judge, the witness has—
>
> [*Defense counsel*]: —several of the pictures that are included in the exhibit, I'm, I'm satisfied and counsel can proceed with his questions as they relate to authentication.
>
> *The Court*: Okay. Go ahead, counsel.

Based on the exchange between the prosecution and defense counsel, it is clear that the trial judge briefly left the bench during trial. The exact length of time is unclear, but it appears that it was no longer than the amount of time that it took a witness to skim through a large number of photographs. When the judge returned, the prosecution laid a foundation for the photographs' admission, and the judge admitted them into evidence on the prosecution's motion.

We do not find that the trial court's brief departure from the bench during trial was so inappropriate that it raises a question of judicial misconduct. The break appeared calculated to minimize the disturbance to the trial—the judge waited to leave the bench until a witness had to skim silently through a large number of photographs for the purpose of authentication, and the admission of that evidence was not in dispute. The attorneys waited to proceed with questioning until the trial judge was present. Keeping in mind the "heavy presumption of judicial impartiality," *Willis*, 322 Mich App at 588, we may presume that the judge decided that it would be more efficient to briefly step out during a natural break in the flow of questioning than it would be to pause the trial and excuse the jury.

Finally, defendant's allegation that defense counsel was held in contempt for questioning the trial judge's conduct is plainly inaccurate. The trial court advised defense counsel to retain an attorney to represent him at a contempt hearing after defense counsel disobeyed the trial court's

order to remain present in the courtroom for at least 20 minutes as the jury was deliberating. After a lunch break, defense counsel's attorney explained that defense counsel had misunderstood the trial court's instructions and thought that he was free to leave. The trial court decided *not* to hold a contempt hearing, and defense counsel was not disciplined in any way. This entire exchange occurred after the trial and outside the presence of the jury, and it did not deprive defendant of a fair trial because it had no influence on the verdict.

Considering the totality of the circumstances, it appears that defendant has mischaracterized or exaggerated the record to form his allegation of judicial misconduct. Defendant has not shown that the trial judge "improperly influenced the jury by creating the appearance of advocacy or partiality against a party." *Stevens*, 498 Mich at 171. The trial court's conduct did not deny defendant a fair trial.

B. PROSECUTORIAL MISCONDUCT

Defendant argues that the prosecution erred by knowingly eliciting false testimony from KB and several other witnesses and by introducing irrelevant testimony. We disagree.

Unpreserved claims of prosecutorial misconduct are reviewed for plain error affecting substantial rights. *Evans*, 335 Mich App at 88. "Generally, prosecutors are accorded great latitude regarding their arguments and conduct." *People v Cooper*, 309 Mich App 74, 90; 867 NW2d 452 (2015) (quotation marks, citation, and brackets omitted). "The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial." *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008). The defendant bears the burden of establishing that he was denied a fair trial. *Id*. "Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial." *Id*. at 135. Furthermore, "[i]t is well settled that a conviction obtained through the knowing use of perjured testimony offends a defendant's due process protections guaranteed under the Fourteenth Amendment." *People v Aceval (On Remand)*, 282 Mich App 379, 389; 764 NW2d 285 (2009). "Thus, to prove prosecutorial misconduct on the basis of perjury, a defendant must show two things—first, that a witness knowingly made a false statement, and second, that the prosecutor knowingly elicited the false statement." *People v Loew*, 340 Mich App 100, 128; 985 NW2d 255 (2022), aff'd 514 Mich 158 (2024).

Defendant alleges that the prosecutor erred by eliciting testimony from KB and several DPD officers that was highly prejudicial and "had nothing to do with the case." However, defendant provides no examples of the testimony that he claims to be irrelevant, nor does he explain how that testimony prejudiced the defense. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . ." *People v Iannucci*, 314 Mich App 542, 545; 887 NW2d 817 (2016) (quotation marks and citation omitted). Defendant has therefore abandoned this issue. See *id*.

Defendant further claims that the prosecutor knowingly elicited false testimony from KB and several other witnesses, but he has not shown that any of the witnesses knowingly made a false statement. The party seeking reversal on appeal bears "the burden of furnishing the reviewing court with a record to verify the factual basis of any argument upon which reversal [is] predicated." *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000). To prove that KB's story was false, defendant attempted to expand the record with several affidavits in support of his *pro se* motion

for a new trial and evidentiary hearing, but this Court rejected those filings because they were not filed through his appointed counsel. Accordingly, we do not consider those affidavits on appeal.

Defendant also attempts to show that KB's trial testimony was false by referencing his testimony at the preliminary examination. At the preliminary examination, KB testified that he had told defendant that his brother had taken the gun, hoping that defendant would release him. KB testified that even though his brother had not stolen the gun, he put the blame on his brother because "I know if I call my brother he's gonna lie for me regardless." The prosecution asked KB why his brother might lie for him, but defense counsel intervened:

> [*Defense counsel*]: Objection, speculation, as to why his brother may lie for him.
>
> *The Court*: And we went over this already before.
>
> [*Prosecution*]: Okay, Judge. I just want to clarify that conversation too because—
>
> *The Court*: Why are we doing this?
>
> [*Prosecution*]: Well, you'll see, Judge. It's—really quickly—You stated your brother's name is [CB]?
>
> *The Court*: No, no, stop.
>
> [*Prosecution*]: Your Honor, may I interject?
>
> *The Court*: No. You know what, [KB], you're done. You can have a seat, [prosecution].
>
> [*Prosecution*]: I am going to place on the record defense counsel has painted a picture. We are asking to clarify these statements and what this witness'[s] motivations were in regards to this lie with his brother.
>
> *The Court*: It's a probable cause hearing. Save that for trial.

Defendant argues that the district court's statement that KB was "done" indicated that the district court was frustrated because KB was lying. However, when the district court's remarks are considered in context, it is clear that the district court was preventing the attorneys from exceeding the scope of the preliminary examination. This exchange does not support defendant's claim that KB gave false testimony.

It appears that defendant's version of events is that KB did in fact steal his property and that KB's family either colluded with the police or made a false report, framing defendant for kidnapping to cover up KB's crime. But aside from his own bare assertions, defendant does not point to any evidence proving that any trial testimony was actually false, let alone that the prosecutor knowingly presented false evidence. "[B]ecause defendant has failed to show that the testimony elicited by the prosecution was actually false, he cannot meet his burden of

demonstrating that the elicitation of such testimony constituted plain error that affected his substantial rights." *People v Bass*, 317 Mich App 241, 272; 893 NW2d 140 (2016).

D. INEFFECTIVE ASSISTANCE OF COUNSEL

Finally, defendant argues that he was denied the effective assistance of counsel by his two trial counsel and his appellate counsel. We disagree.

A preserved claim of ineffective assistance of counsel is a mixed question of fact and constitutional law. *People v Leffew*, 508 Mich 625, 637; 975 NW2d 896 (2022). "The trial court's findings of fact are reviewed for clear error, and questions of constitutional law are reviewed de novo." *Id*. Unpreserved claims of ineffective assistance of counsel are reviewed for "errors apparent on the record." *People v Unger (On Remand)*, 278 Mich App 210, 253; 749 NW2d 272 (2008).

"The Court uses the same legal standard for ineffective assistance of counsel when scrutinizing the performance of trial counsel and appellate counsel." *Lopez*, 305 Mich App at 693. To prevail on a claim of ineffective assistance of counsel, the defendant must demonstrate "that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that the outcome would have been different." *People v Trakhtenberg*, 493 Mich 38, 51; 826 NW2d 136 (2012). "Counsel is strongly presumed to have rendered adequate assistance," and the defendant must identify specific acts or omissions that constitute ineffective assistance. *Strickland v Washington*, 466 US 668, 690; 104 S Ct 2052; 80 L Ed 2d 674 (1984). "This Court will not substitute [its] judgment for that of counsel on matters of trial strategy, nor will we use the benefit of hindsight when assessing counsel's competence." *Loew*, 340 Mich App at 120 (quotation marks and citation omitted; alteration in original). A failed strategy does not render trial counsel ineffective. *People v Petri*, 279 Mich App 407, 412; 760 NW2d 882 (2008). Additionally, trial counsel is not ineffective for failing to advance a meritless argument. *People v Isrow*, 339 Mich App 522, 532; 984 NW2d 528 (2021).

1. APPOINTED COUNSEL

Defendant contends that his appointed trial counsel[5] was ineffective because he "intentionally failed to appropriately dismiss, e.g., under MCR 6.110 *et seq*., especially on the warrants and 'charging instruments' that were [indeed] illegal on their face." (Brackets in original). Defendant's argument appears to be that appointed counsel should have argued that there was no probable cause at the preliminary examination, MCR 6.110(F), because the felony warrant and complaint were invalid, or else that he should have moved to dismiss under MCR 6.110(H) on the basis that the trial court erred by binding over defendant. This argument is without merit.

[5] Appointed trial counsel passed away during defendant's pretrial proceedings. Defendant was appointed substitute counsel until he retained his own attorney in February 2024, a few months before his trial in May 2024.

Defendant argues that the police "entered [defendant's] home without a warrant, then later concocted an invalid complaint and warrant on non-approved forms, also with no proper verification an[d] notarization under MCR 1.109." But the police did not need a warrant to arrest defendant in his home because they were responding to a report of an active kidnapping situation, so exigent circumstances justified a warrantless arrest to "(1) protect the police officers or other persons, (2) prevent the loss or destruction of evidence, or (3) prevent the escape of the suspect." *People v Love*, 156 Mich App 568, 570; 402 NW2d 9 (1986). The police later executed a search warrant for defendant's home, but that warrant is not part of the lower court record, and defendant does not challenge its validity.

Regarding the felony complaint, defendant argues that the document is invalid because it did not use the appropriate form. "At the time of filing [the complaint], specified case initiation information shall be provided in the form and manner approved by the State Court Administrative Office [(SCAO)]." MCR 6.101(A). Additionally, "[t]he complaint must be signed and verified under MCR 1.109(D)(3)." MCR 6.101(B). Contrary to defendant's assertions, the felony complaint was signed and verified in accordance with MCR 1.109(D)(3). And although the complaint did not use the exact formatting of the SCAO-approved form for felony complaints,[6] it contained all the substantive information necessary to inform defendant of the charges against him. Defendant has not explained how such minor deviations from the SCAO-approved form changed the outcome of his trial or otherwise prejudiced the defense. Therefore, defendant has not shown that appointed trial counsel was ineffective for failing to argue that the complaint and warrant were invalid. See *Trakhtenberg*, 493 Mich at 51.

Defendant also claims that appointed counsel was ineffective for failing to ensure that the trial court held a probable-cause conference. This argument fails because the record indicates that a probable-cause conference was held on December 3, 2021, and defendant was present for that hearing via Zoom. See *Isrow*, 339 Mich App at 532 ("Failure to raise a futile objection . . . does not constitute ineffective assistance of counsel."). Defendant further alleges that appointed counsel was ineffective for failing to "effectively challenge" KB's statements, failing to subpoena KB's cell phone records, and failing to interview ZG. But as we have held, defendant has not shown that any of KB's statements were actually false. And aside from defendant's bare assertions and affidavits that this Court has rejected for filing, defendant has not shown what KB's cell records or an interview with ZG would have revealed, let alone how that evidence would have affected his defense. In other words, there is no error apparent on the record. *Unger*, 278 Mich App at 253.

2. RETAINED COUNSEL

Defendant claims that his retained trial counsel also failed to effectively challenge KB's credibility and did not "effectively motion to introduce all of" the evidence of KB's alleged lies. But retained counsel did challenge KB's credibility during cross-examination by comparing KB's trial testimony to his testimony at the preliminary examination. For example, KB testified at trial that Williams hit him with a fan, but he confirmed that he had not mentioned that detail at the

[6] At the time that the complaint was signed in November 2021, the applicable form was SCAO, *Form MC 200* (Dec 2019).

preliminary examination. KB also confirmed that he had previously testified that his brother would lie for him. Part of retained counsel's trial strategy was to raise questions about whether KB had actually stolen from defendant and to highlight a possible motive for KB and his family to lie about the offense. The jury still believed KB's story enough to reach a guilty verdict, but that did not render retained counsel's assistance ineffective. See *Petri*, 279 Mich App at 412. Furthermore, defendant has not sufficiently identified the specific evidence that retained counsel ought to have introduced, see *Strickland*, 466 US at 690, but he appears to refer only generally to all the so-called evidence that supports his narrative of events over KB's narrative, none of which is included in the lower court record. Accordingly, defendant has not shown that retained counsel made any mistakes that denied him the effective assistance of counsel.

3. APPELLATE COUNSEL

Defendant also argues his appellate counsel was ineffective for refusing to raise the issues that defendant raised in his Standard 4 brief. "[A]ppellate counsel's decision to winnow out weaker arguments and focus on those more likely to prevail is not evidence of ineffective assistance." *People v Reed*, 449 Mich 375, 391; 535 NW2d 496 (1995). Given that we have rejected all of defendant's *pro se* arguments, we cannot hold that appellate counsel was ineffective for failing to raise those same arguments. See *Isrow*, 339 Mich App at 532. Overall, defendant has failed to show that any of his attorneys were ineffective.

IV. CONCLUSION

Defendant's within-guidelines sentence was reasonable, and defendant has failed to show that the judge, the prosecutor, or any of his attorneys erred during the proceedings.[7]

Affirmed.

/s/ Christopher M. Murray
/s/ Mark T. Boonstra
/s/ Michael J. Riordan

[7] Because we have not found any error, defendant's argument based on the cumulative effect of the alleged errors necessarily fails. See *People v Dobek*, 274 Mich App 58, 106; 732 NW2d 546 (2007) ("Absent the establishment of errors, there can be no cumulative effect of errors meriting reversal.").

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

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 21, 2026 10:08 AM
v	No. 372370 Wayne Circuit Court
ANTHONY WESLEY TYLER, Defendant-Appellant.	LC No. 22-000790-01-FC

Before: MURRAY, P.J., and BOONSTRA and RIORDAN, JJ.

MURRAY, P.J. (*concurring*).

I concur with the majority opinion, but briefly write separately to address the prosecution's main argument on appeal, i.e., that *People v Posey*, 512 Mich 317, 359; 1 NW3d 101 (2023) (opinion by BOLDEN, J.) (*Posey I*), should not be considered precedential, and that our Court strayed from long-standing precedent in concluding that *Posey* should be treated as binding precedent despite being a plurality opinion. The prosecution is correct, as it appears this Court decided to adhere to *Posey*'s result for efficiency and stability in the law, rather than what the law on stare decisis requires.

It has always been the case that legal statements or conclusions in a Supreme Court decision are not binding on the lower courts unless a majority of the court agreed to those conclusions. See *Breckon v Franklin Fuel Co*, 383 Mich 251, 278-279; 174 NW2d 836 (1970), overruled on other grounds by *Smith v Detroit*, 388 Mich 637 (1972) ("A decision by an equally divided court does not establish a precedent required to be followed under the stare decisis doctrine. And where the members of the court unanimously or by majority vote reach a decision but cannot, even by a majority, agree on the reasoning therefor, no point of law is established by the decision and it cannot be a precedent covered by the stare decisis rule.") (quotation marks and citation omitted); *Kalamazoo v Crawford*, 154 Mich 58, 59; 117 NW 572 (1908) ("It has been held by many courts that a decision by a divided court does not settle the law for other cases."); *Fogarty v Dep't of Transp*, 200 Mich App 572, 574-575; 504 NW2d 710 (1993) ("[W]here a majority reaches a decision, but does not agree on the underlying reasoning, no point of law is established by the decision.").

This Court previously recognized that *Posey* was not binding under stare decisis because the reasoning for striking down the first sentence of MCL 769.34(10) was not agreed to by a majority of justices. See *People v Posey (On Remand)*, 349 Mich App 199, 202-203; 27 NW3d 137 (2023) (*Posey II*), and *People v Purdle (On Remand)*, 350 Mich App 446, 452-453; 32 NW3d 479 (2024). Despite this, our Court held that "in the interest of judicial economy and jurisprudential stability, we will apply to the instant case the essential holdings upon which a *Posey* majority agreed." *Purdle*, 350 Mich App at 453-454. See more recently *People v Brcic*, ___ Mich App ___, ___ n 8; ___ NW3d ___ (2026) (Docket Nos. 362727 and 366230); slip op at 10 n 8.

As the prosecution argues, because *Posey* is not binding this Court should have independently determined if MCL 769.34(10) is constitutional. For one, we should not follow a non-binding decision of the Supreme Court simply because a majority of that Court agreed on a result, but not the rationale getting to that result. To do so is inconsistent with the well-established law cited earlier that dates back to the early 1900s. Additionally, requiring that a majority of justices agree on *why* a statute is unconstitutional is critically important, as declaring a statute unconstitutional is *supposed to be* difficult, particularly because of the presumption of constitutionality given to statutes. See *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 11; 740 NW2d 444 (2007), and *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). Finally, prior to *Posey,* our Court had held that MCL 769.34(10) was constitutional even after *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015), thus providing binding caselaw enforcing MCL 769.34(10). See *People v Schrauben*, 314 Mich App 181, 196; 886 NW2d 173 (2016), overruled on other grounds by *Posey I*; *People v Willis*, 322 Mich App 579, 593-594; 914 NW2d 384 (2018); *People v Jackson*, 320 Mich App 514, 527; 907 NW2d 865 (2017), reversed on other grounds 504 Mich 929 (2019).

In considering the constitutional validity of MCL 769.34(10), this Court should have adopted the reasoning of then Chief Justice Clement and concluded that the statute passes constitutional muster under both the Sixth Amendment to the United States Constitution, and the right to appeal provision of our State Constitution, Const 1963, art 1, § 20. See *Posey*, 512 Mich at 433-445 (CLEMENT, C.J., joined by ZAHRA, J. and VIVIANO, J., concurring in part). But because this Court instead chose to enforce the plurality ruling from *Posey* in published decisions, we are essentially left to follow suit.

/s/ Christopher M. Murray