

STATE OF MAINE

v.

JOSEPH DUQUETTE SR.

Submitted on Briefs June 27, 2018
Decided July 17, 2018

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Joseph Duquette Sr. appeals from a judgment of conviction entered by the trial court (Penobscot County, *Anderson, J.*) after a jury found him guilty of domestic violence assault (Class D), 17-A M.R.S. § 207-A(1)(A) (2017). Duquette principally contends that the court erred because the record does not affirmatively reflect that his trial counsel was involved in the court's disposition of two notes sent out by the jury during deliberations. Duquette has not provided us with a record on appeal demonstrating any error by the court, and we will not presume error in light of his failure to meet his burden of persuasion.¹ See *Kilton v. Kilton*, 2016 ME 63, ¶¶ 5-6, 8, 137 A.3d 1026 (stating that an appellant asserting procedural error "[bore] the burden to demonstrate error"); see also *State v. Haji-Hassan*, 2018 ME 42, ¶ 18, 182 A.3d 145 ("On appeal, [the appellant] has the burden to demonstrate an obvious error.");

¹ To the contrary, Duquette's trial counsel executed an affidavit stating that he was aware of the jury's notes, was consulted by the court concerning how to proceed, and was afforded the opportunity to discuss the issue with Duquette before the court took any action. Although the State's motion to supplement the record on appeal with that affidavit was denied on other grounds, Duquette's appellate counsel was on notice that his primary issue on appeal had lost its vitality.

State v. Hunt, 2016 ME 172, ¶ 12 n.2, 151 A.3d 911 (“[a]lthough the court did not state [so] expressly . . . in the absence of any indication to the contrary, we assume that the court applied the correct standard”). Examining the record before us for obvious error and finding none, “there is no basis to grant relief on appeal,” and we affirm the judgment. *Kilton*, 2016 ME 63, ¶¶ 6, 8, 137 A.3d 1026.

The entry is:

Judgment affirmed.

Erik T. Crocker, Esq., Farrell, Rosenblatt & Russell, Bangor, for appellant Joseph Duquette Sr.

R. Christopher Almy, District Attorney, and Mark A. Rucci, Asst. Dist. Atty., Prosecutorial District V, Bangor, for appellee State of Maine