STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ANTHONY WILSON,

Defendant-Appellant.

UNPUBLISHED
May 9, 1997

No. 189422
Oakland Circuit Court
LC No. 95-137486

Before: Cavanagh, P.J., and Reilly and White, JJ

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree criminal sexual conduct, MCL 750.520b(1)(f); MSA 28.788(2)(1)(f), assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and resisting or obstructing an officer in the discharge of duty, MCL 750.479; MSA 28.747. After his convictions, defendant pleaded guilty to three counts of being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. He was sentenced to thirty to fifty years' imprisonment for the criminal sexual conviction, 80 to 120 months' imprisonment for the assault conviction and sixteen to twenty-four months' imprisonment for the resisting arrest conviction. The court then vacated defendant's sentences on the underlying convictions and sentenced him to thirty to fifty years' imprisonment, 80 to 240 months' imprisonment, and 16 to 180 months' imprisonment for the habitual offender convictions. Defendant now appeals as of right. We affirm.

Defendant first argues that the prosecutor improperly injected defendant's prior criminal record into the trial. Defendant points to two allegedly improper references to his prior incarceration. However, he failed to object to either instance. Absent an objection at trial, appellate review of prosecutorial misconduct is precluded unless a curative instruction could not have eliminated the prejudicial effect or the failure to consider the issue would result in a miscarriage of justice. *People v Nantelle*, 215 Mich App 77, 86-87; 544 NW2d 667 (1996). We find that the allegedly improper conduct does not warrant reversal.

The first allegedly improper reference occurred during testimony from the victim, who said that defendant told her he did not care if he killed her because "he'd go back to jail anyway." This testimony was relevant to elements of first-degree criminal sexual conduct because it tended to show that defendant used coercion and caused the victim mental anguish. Therefore, the testimony was properly admissible. *People v Johnson*, 171 Mich App 801; 430 NW2d 828 (1988). The second reference to defendant's prior incarceration came in the form of a question from the prosecutor to a witness:

> And, it's true, isn't it, that before you left that day you tried to get him out of there? You said, "Come on man, it's not worth going back to prison for. Just get on out of here"?

This reference to defendant's earlier incarceration did not deny defendant a fair trial inasmuch as it merely repeated information provided earlier by the victim. *People v Harris*, 113 Mich App 333, 337; 317 NW2d 615 (1982). Our failure to consider the issue further will not result in a miscarriage of justice.

Defendant next argues that the prosecutor improperly asked him to comment on the credibility of other witnesses. Although the prosecutor did ask several questions that were arguably improper, they were harmless. *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985).

Defendant next argues that the prosecutor improperly expressed a personal opinion regarding his credibility. The prosecutor asked defendant "It seems to me, sir, that you're very selective in what you can and can't recall, is that true?" Although this remark was unnecessarily argumentative, the prejudicial effect could have been eliminated by a curative instruction and the failure to consider the issue further will not result in a miscarriage of justice. *Nantelle, supra*. None of the prosecutor's comments in this case, individually or combined, warrant reversal. *People v Weatherspoon*, 171 Mich App 549, 560-561; 431 NW2d 75 (1988).

Defendant next argues that he was denied the effective assistance of counsel. However, defense counsel's alleged errors were generally matters of trial strategy. This Court will not second guess matters of trial strategy. *People v Murph*, 185 Mich App 476, 479; 463 NW2d 156 (1990). In addition, defendant has failed to show that his attorney's conduct so prejudiced him as to deny him a fair trial. Under these circumstances, defendant was not denied the effective assistance of counsel. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994).

Finally, defendant argues that the trial court erred in calculating his sentence under the sentencing guidelines by scoring fifty points for Offense Variable 2. However, defendant's challenge fails to state a cognizable claim for relief under *People v Mitchell*, ___ Mich ___; ___ NW2d ___ (Docket Nos. 98984, 98985, issued 3/25/97), as well as *People v Edgett*, 220 Mich App 686, 694-695; ___ NW2d ___ (1996).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly
/s/ Helene N. White