

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHELLE R. WILSON,

Defendant-Appellant.

UNPUBLISHED

July 25, 1997

No. 185057

Oakland Circuit Court

LC No. 93-123508 FH

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Defendant appeals by right her jury convictions of malicious destruction of property over \$100 and felonious assault. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant claims that joint representation of herself and codefendant William Daniels by a single attorney involved a conflict of interest sufficiently serious to deprive her of effective assistance of counsel. *Holloway v Arkansas*, 435 US 475; 98 S Ct 1173; 55 L Ed 2d 426 (1978). Such a conflict is never presumed or implied. Defendant has the burden of establishing a prima facie case of ineffective assistance of counsel, and must show that an actual conflict of interest existed and adversely affected the adequacy of her representation. *Cuyler v Sullivan*, 446 US 335, 348-350; 100 S Ct 1708; 64 L Ed 2d 333 (1980).

Here, although the trial court failed to follow the procedures required by MCR 6.005(F), such omission, of itself, does not constitute reversible error. *People v Gamble*, 124 Mich App 606, 611; 335 NW2d 101 (1983). Defendant must identify facts showing a conflict of interest existed which could have caused her to receive ineffective assistance of counsel. *People v LaFay*, 182 Mich App 528, 531; 452 NW2d 852 (1990). This Court notes that, even if original defense counsel's affidavit were correct in identifying a conflict of interest in the event of separate trials, such conflict would not apply to a joint trial, which is what occurred. In a joint trial, one or the other of the defendants had to testify to establish a basis for the self-defense claim.

* Circuit judge, sitting on the Court of Appeals by assignment.

In fact, there was no conflict because, whether or not jointly or separately represented by counsel, each defendant had to decide for himself or herself how to weigh the risks of being exposed to cross-examination against the benefits of presenting a self-defense claim and explaining his or her conduct to the jury. As defendant has failed to establish how she was prejudiced by having in fact decided to testify, and having had the benefit of the testimony of her codefendant as well, her claim of ineffective assistance of counsel is not one on which appellate relief may be awarded. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Subsidiary claims of ineffective assistance of counsel are likewise without merit. None of the claims actually constitutes a prejudicial dereliction in counsel's performance. *People v Lavearn*, 448 Mich 207; 528 NW2d 721 (1995).

Affirmed.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn