STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES KENNETH WILLINGHAM, SR.,

Defendant-Appellant.

UNPUBLISHED
August 25, 1998

No. 201982
Newaygo Circuit Court
LC No. 96-006314 FH

Before: Saad, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

After defendant pled guilty to assault with intent to commit criminal sexual conduct, second degree, his bond was continued pending sentencing. The terms of defendant's bond included the requirement that he personally appear for any examination, arraignment, trial, or sentencing, and the agreement that any notice to appear could be given to defendant's attorney in place of personal notice to defendant. Defendant failed to appear at the hearing scheduled for sentencing and was subsequently convicted by a jury of absconding or forfeiting bond in criminal proceedings. MCL 750.199a; MSA 28.396(1). He appeals as of right from this conviction. We affirm.

Defendant first challenges the sufficiency of the evidence supporting the jury's verdict. To sustain a conviction of absconding or forfeiting while on bond for a felony, the prosecution was required to prove the following elements: (1) that the defendant gave a bond in a criminal proceeding in which a felony was charged; (2) that the defendant forfeited that bond by intentionally or recklessly violating a condition of the bond; and (3) that the defendant had notice of the condition of the bond that the prosecution claims was violated. *People v Freybler*, 173 Mich App 539, 540-541; 434 NW2d 187 (1988); *People v Rorke*, 80 Mich App 476, 478; 264 NW2d 30 (1978). Here, defendant challenges only the evidence supporting the second element of the crime. In reviewing a sufficiency of the evidence question, this Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the crime were proved beyond a reasonable doubt. *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998).

When viewed in the light most favorable to the prosecution, the evidence was sufficient to

support the second element of this crime. First, defendant conceded that he had read his bond terms and conditions. Second, defendant testified that his probation officer told him to keep in touch with his attorney, yet he did not contact either his trial attorney, his probation officer, or the prosecutor's office regarding his sentencing date until approximately three months after entering his guilty plea to the assault charge. Third, the probation officer testified that he sent both defendant and defendant's attorney notice of the sentencing. Last, the clerk of the court testified that the attorney had appeared at the sentencing. From this evidence, the jury could properly find that defendant acted recklessly or intentionally in failing to appear for his sentencing. Therefore, we hold that the prosecution presented sufficient evidence for a jury to conclude beyond a reasonable doubt that defendant was guilty of forfeiture of bond pursuant to MCL 750.199a; MSA 28.396(1). *Warren, supra* at 343.

Next, defendant argues that he was denied a fair trial by the admission into evidence of his underlying conviction. However, defendant did not preserve this issue for our review by raising it at trial; therefore, we review this issue only for evidence of manifest injustice requiring reversal and find none. *People v Mayfield*, 221 Mich App 656, 660-661; 562 NW2d 272 (1997). The prosecution presented evidence of defendant's conviction and the terms of the plea bargain, but defense counsel also made frequent use of the same evidence, in order to show that defendant had received a beneficial plea bargain and would have no motive to intentionally fail to attend his sentencing hearing. "Defendant should not be allowed to assign error on appeal to something which his own counsel deemed proper at trial. To do so would allow defendant to harbor error as an appellate parachute." *People v Roberson*, 167 Mich App 501, 517; 423 NW2d 245 (1988).

Similarly, defendant next argues that he was deprived of effective assistance of counsel due to his attorney's failure to object to references to defendant's underlying conviction and his failure to stipulate to the fact of defendant's underlying conviction in order to block any further references to the conviction. A defendant who claims the denial of effective assistance of counsel must first establish that counsel's performance was below an objective standard of reasonableness under prevailing professional norms and must overcome a strong presumption that counsel's assistance constituted sound trial strategy. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* As stated previously, the record in this case indicates that the strategy of defense counsel was to show the jury that defendant had no reason to want to intentionally or recklessly forfeit his bond. That a trial strategy does not work does not render its use ineffective assistance of counsel. *Stewart, supra* at 42.

Defendant argues that he was also denied effective assistance of counsel as a result of his attorney's failure to call as a witness the attorney who had represented defendant during the proceedings surrounding the underlying conviction. Defendant argues that the attorney should have been called to testify about whether he received notice of defendant's sentencing and whether he notified defendant about the proceeding. However, both of these issues were addressed at trial through other testimony. Because defendant has not shown that there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's failure to call the attorney, defendant has not established ineffective assistance of counsel. See *Stanaway, supra* at 687-688.

Defendant's last argument, which is that he was denied a fair trial as the result of the cumulative effect of the alleged errors, is without merit because we find no error on any single issue. See, e.g., *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998).

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra