STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 15, 1999
v	No. 198683 Lapeer Circuit Court
DUANE ERIC REEDER, Defendant-Appellant.	LC No. 95-005613 FH

Before: Smolenski, P.J., and Saad and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by jury for assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279. The court sentenced defendant to serve six to twenty years in prison as a third habitual offender, MCL 769.11; MSA 28.1083. We affirm.

I

Defendant argues that he was denied effective assistance of counsel based on, among other things, counsel's failure to explain a plea bargain and the charges pending against him, his failure to involve and explain to defendant the jury selection process, his failure to call certain witnesses and present certain evidence, and his failure to develop a close working relationship with defendant. At an evidentiary hearing on this claim, testimony revealed that defense counsel had related the plea bargain and its terms several times to defendant, and that defendant refused the bargain. Furthermore, defense counsel testified that he explained the jury selection process to defendant, and conferred with defendant regarding who would be an appropriate juror. Counsel testified that he did not raise certain issues or call certain witnesses because they were either not relevant to, or were inconsistent with, defendant's diminished capacity defense. Defense counsel's decisions regarding what evidence to present and whether to call witnesses are matters of trial strategy. *People v Mitchell*, 454 Mich 145, 163; 560 NW2d 600 (1990). A sound trial strategy that fails does not constitute ineffective assistance of counsel. *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995). Finally, defense counsel testified that he had contact with defendant on several occasions prior to trial. We note that the length of time defense counsel spent with defendant in preparing the case is not necessarily determinative of whether the case was adequately prepared so as to afford defendant adequate representation, *People v*

Stevenson, 28 Mich App 538; 184 NW2d 541 (1970); *People v Vaughn*, 31 Mich App 599; 188 NW2d 53 (1971). We conclude that defendant has failed to overcome the presumption that counsel was effective. *People v Torres*, 222 Mich App 411; 564 NW2d 149 (1997).

II

Defendant also contends that the verdict was against the great weight of the evidence, and that there was insufficient evidence presented at trial to find defendant guilty beyond a reasonable doubt. "The elements of assault with intent to commit great bodily harm less than murder are: (1) an attempt or offer with force or violence to do corporeal hurt to another, (2) coupled with an intent to do great bodily harm less than murder." *People v Pena*, 224 Mich App 650, 659 (1997), modified on other grounds, 457 Mich 883 (1998). This is a specific intent crime but actual physical injury is not an element. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992). Thus defendant's claim that the victim's injuries were not severe enough to support his conviction under either a sufficiency or great weight theory is without merit. We conclude that the jury's verdict was not otherwise against the great weight of the evidence. The trial court heard the victim's testimony, corroborated by defendant's mother and the responding police officer and was satisfied, as apparently the jury was satisfied, that she was severely beaten by defendant. Although defendant argued that this was not the case, it was the province of the jury to determine questions of fact and assess the credibility of witnesses. "As the trier of fact, the jury is the final judge of credibility." *People v Johnson*, 397 Mich 686, 687; 246 NW2d 836 (1976). Here, the jury's verdict was consistent with, not manifestly against the clear evidence presented at trial. *People v Daoust*, 228 Mich App 1, 16; 557 NW2d 179 (1998).

In reviewing sufficiency of the evidence, circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime, *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993), and this Court will not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992). The victim testified that defendant assaulted her and this was supported by the testimony of other witnesses. Thus, the first element of the crime – an attempt or offer with force or violence to do physical hurt, was satisfied. *Pena, supra*, at 659. As for the second element regarding intent, intent may be inferred from all the facts and circumstances surrounding the event. *People v Safiedine*, 163 Mich App 25, 29; 413 NW2d 711 (1987). The evidence here, including the victim's testimony of repeated blows and striking her head against a wall, was sufficient to give rise to an inference that defendant specifically intended to cause the victim great bodily harm. Therefore, viewing the evidence in the light most favorable to the prosecution, the jury could find that both the assault and the intent elements were proven beyond a reasonable doubt. *Wolfe, supra* at 515.

III

Finally, defendant claims that his six to twenty year sentence is disproportionate to his offense. The trial court's consideration of defendant's past offenses, *People v Hunter*, 176 Mich App 319, 321; 439 NW2d 334 (1989), the nature of the crime, *People v Ross*, 145 Mich App 483, 495; 378 NW2d 517 (1985), and defendant's personal history regarding substance abuse, *People v Lemons*,

454 Mich 234, 259; 562 NW2d 447 (1997), was permissible. Furthermore, the record does not show that the trial court failed to consider defendant's arguments on his own behalf as defendant claims; it merely reveals that the trial court was not terribly persuaded by these arguments. Defendant was convicted of assault with intent to commit great bodily harm less than murder and the record shows that the victim was severely beaten. Furthermore, defendant was convicted as an habitual offender, and defendant has a substantial criminal record. We conclude that defendant's sentence is proportionate to the offense committed and his past record. *Milbourn, supra,* at 635-636. Accordingly, the trial court did not abuse its discretion in sentencing defendant. *People v Coles,* 417 Mich 523; 339 NW2d 440 (1983), overruled in part on other grounds *People v Milbourn,* 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Hilda R. Gage