

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY D. DANIELS,

Defendant-Appellant.

UNPUBLISHED

February 19, 1999

No. 203445

Recorder's Court

LC No. 96-008713

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial convictions of felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), for which he was sentenced to one to four years' imprisonment on the assault conviction plus the mandatory two-year consecutive term for felony-firearm. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant raises two issues: (1) "Did the lower court err reversibly by convicting defendant without using legally admissible evidence?" and (2) "Was defense counsel ineffective in his representation of defendant for failing to elicit his testimony?"

Contrary to defendant's argument under his first issue, the trial court did rely upon legally admissible evidence, in particular, the direct, eyewitness testimony of the assault victim, Mr. L. C. Wimbley. Viewing the evidence in a light most favorable to the prosecution, we find the evidence sufficient to prove the elements of felonious assault and felony-firearm beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). Regarding defendant's second issue, defendant has failed to overcome the presumption that defense counsel's decision not to call defendant to testify constituted sound trial strategy. *People v Shively*, 230 Mich App 626, 628-629; 584 NW2d 740 (1998). See also *People v Mitchell*, 454 Mich 145, 166; 560 NW2d 600 (1997).

Affirmed.

/s/ William B. Murphy

/s/ Barbara B. MacKenzie

/s/ Michael J. Talbot

