

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LINDY LEE MATTOX,

Defendant-Appellant.

UNPUBLISHED

March 19, 1999

No. 207481

Presque Isle Circuit Court

LC No. 97-091609 FH

Before: O'Connell, P.J., and Jansen and Collins, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of third-degree criminal sexual conduct involving a child between thirteen and sixteen years of age, MCL 750.520d(1)(a); MSA 28.788(4)(1)(a), and she was sentenced to three to fifteen years' imprisonment. She appeals by right. We affirm.

On appeal, defendant argues that she was denied effective assistance of counsel because her trial attorney did not move to suppress or at least attempt to minimize her taped interview with an investigator, failed to call as witnesses any of the children who were present but sleeping at the time, failed to assert defendant's back injury as a defense and failed to request a missing witness instruction when a prosecution rebuttal witness did not appear. However, because defendant did not move for a new trial or an evidentiary hearing on this basis below, appellate review is foreclosed unless there is sufficient detail in the existing record to support defendant's claims. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

Here, the record is insufficient to indicate a viable basis for any of the proposed motions or defenses, or to indicate that any of the proposed witnesses would have given testimony favorable to defendant. Defendant has neither overcome the presumption that trial counsel provided effective assistance and exercised sound trial strategy nor shown that trial counsel's omissions detrimentally affected the outcome of trial. *People v Fike*, 228 Mich App 178, 180-183; 577 NW2d 903 (1998)

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins