

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEREMY DUANE SHAW,

Defendant-Appellant.

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UNPUBLISHED

June 22, 1999

No. 207459

Recorder's Court

LC No. 96-008858

Before: Neff, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Defendant was convicted following a bench trial of two counts of armed robbery, MCL 750.529; MSA 28.787, one count of assault with intent to rob while armed, MCL 750.89; MSA 28.284, one count of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, one count of first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to serve twenty to forty years' imprisonment for each of the armed robbery convictions and for the assault with intent to rob while armed conviction, seven to ten years' imprisonment for the assault with intent to do great bodily harm conviction, and ten to twenty years' imprisonment for the first-degree home invasion conviction, plus a mandatory two-year sentence for the felony-firearm conviction. The sentences on the first five counts are to be served concurrently with each other and consecutively to the two-year sentence for the felony-firearm conviction. Defendant appeals as of right, and we affirm.

Defendant first claims that his trial counsel was ineffective for advising him not to testify at a *Walker* hearing<sup>1</sup> wherein the voluntariness of his statements to the police was determined. We disagree. Because defendant failed to move for a new trial or evidentiary hearing, our review is limited to errors that are apparent from the trial court record. *People v Nantelle*, 215 Mich App 77, 87; 544 NW2d 667 (1996).

We review an ineffective assistance of counsel claim to determine whether defendant has shown that counsel's performance fell below an objective standard of reasonableness and that the representation so prejudiced defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich

298, 338; 521 NW2d 797 (1994). Defendant needs to demonstrate that, but for defense counsel's errors, there was a reasonable probability that the result of the proceeding would have been different. *People v Mitchell*, 454 Mich 145, 157-158; 560 NW2d 600 (1997); *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). There is a strong presumption that counsel's assistance constituted sound trial strategy. *Id.* at 687.

In this case, it is clear from the record that defendant and his counsel discussed whether defendant should testify at the hearing, and defendant agreed that it was best that he did not testify. Defendant has failed to show that counsel's advice fell below an objective standard of reasonableness and that the result of the proceeding would probably have been different had he not been advised to refrain from testifying. Moreover, our review of the record does not reveal any facts that would lead us to conclude that counsel's advice to defendant was not sound trial strategy, and therefore, we find that defendant has failed to make the requisite showing that his trial counsel was ineffective.

Defendant next argues that his minimum sentences for armed robbery are disproportionate. He claims that his sentence should be vacated because the trial court focused solely on the serious nature of the crime and failed to consider defendant's prior record while imposing sentence. We disagree.

Even though defendant's minimum sentence was at the high end of the sentencing guideline, it was within the guidelines and is thus presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant has failed to set forth any unusual circumstances that would overcome the presumption of proportionality. *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990). Although defendant had no prior felony convictions and only one misdemeanor conviction, he had an extensive juvenile record with a history of crimes involving theft and breaking and entering. The trial court was in possession of this information. Moreover, a review of the record demonstrates the serious nature of defendant's assaultive crimes. Defendant broke into an occupied home, held the occupants of the home at gun point, stole money, and shot a person when he did not move onto the ground fast enough. Considering the offense and the offender, we find that defendant's sentences do not violate the principle of proportionality.

Affirmed.

/s/ Janet T. Neff  
/s/ Harold Hood  
/s/ William B. Murphy

<sup>1</sup> *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).