

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEROME MARTIN,

Defendant-Appellant.

UNPUBLISHED

March 21, 2000

No. 206290

Recorder's Court

LC No. 96-003340

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

PER CURIAM.

Following a jury trial, defendant was acquitted of second-degree murder, MCL 750.317; MSA 28.549, but convicted of the lesser offense of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. He was sentenced as a second habitual offender, MCL 769.10; MSA 28.1082, to a term of 100 to 150 months' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues that the trial court abused its discretion in denying his motion for a new trial, a motion brought on the basis that his conviction was against the great weight of the evidence. MCR 2.611(A)(1)(e). We disagree.

Defendant's claim is principally predicated on the fact that the main prosecution witness, Lisa Gaines, who had several aliases, lacked credibility. At trial, Gaines testified, consistent with her previous police statements and testimony at the first trial, that she saw defendant pick up the decedent and slam him head first onto the street. The medical examiner testified that the decedent's death was caused by blunt force injuries, which included head injuries and injuries to his chest and right side of his back. Another witness, James Record, also gave testimony linking defendant to a group of persons who assaulted the decedent in the building where Record worked. While defendant claims that Gaines lacked credibility, as our Supreme Court explained in *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998) (internal citation omitted), "issues of witness credibility are for the jury, and the trial court may not substitute its view of the credibility 'for the constitutionally guaranteed jury determination thereof.'" We conclude that the evidence did not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *Id.*; *People v Gadomski*, 232 Mich

App 24, 28; 592 NW2d 75 (1998). Therefore, defendant's motion for a new trial was properly denied.

Next, defendant claims that he was denied his constitutional right of confrontation, US Const, Am VI; Const 1963, Art 1, § 20, because he could not ascertain the true identity of Gaines, given her use of different aliases. This claim is meritless. As the trial court noted in denying defendant's motion for a new trial, this case is distinguishable from *Smith v Illinois*, 390 US 129; 88 S Ct 748; 19 L Ed 2d 956 (1968). In *Smith*, the Supreme Court determined that the defendant was deprived of his right to confront witnesses when he was not allowed to ask the principal prosecution witness questions about his name and where he lived, after the witness had admitted that the first name he gave was false. *Id.* at 130-133. In this case, defendant was permitted to cross-examine Gaines with regard to her address and other matters of identity, including her use of aliases. Accordingly, there is no merit to defendant's claim that he was denied his right of confrontation or due process.

We also reject defendant's claim that trial counsel was ineffective for failing to adequately investigate the identity of Gaines. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994); *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). As the trial court observed in denying defendant's motion for an evidentiary hearing with regard to this claim:

Counsel's decision to accept the statement of an officer of the court (the prosecutor) made on the record, that a criminal record check yielded negative results, was a "reasonable professional judgment," and was in no way "deficient." Defendant's assertions do not establish that counsel made errors that were so serious that he was not functioning as counsel guaranteed by the Sixth [A]mendment or that the errors prejudiced the defense.

Furthermore, defendant has not presented any evidence or offer of proof, either below or on appeal, indicating that any useful information not presented at trial actually exists. Therefore, he has not established the requisite prejudice necessary to prevail on a claim of ineffective assistance of counsel. *Pickens, supra*.

Finally, defendant's habitual offender sentence does not violate the principle of proportionality. *People v Gatewood*, 450 Mich 1025; 546 NW2d 252 (1996); *People v Cervantes*, 448 Mich 620; 532 NW2d 831 (1995).

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ E. Thomas Fitzgerald