

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARTEZ STRADWICK,

Defendant-Appellant.

UNPUBLISHED

August 4, 2000

No. 214681

Wayne Circuit Court

Criminal Division

LC No. 97-010480

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

PER CURIAM.

Defendant appeals as of right from his conviction of armed robbery, MCL 750.529; MSA 28.797, entered after a bench trial. We affirm.

Kevin Kinsey, the manager of a market robbed by two men carrying a gun and a baseball bat, identified defendant, an employee, as one of the perpetrators in a voice lineup. Kinsey's car was stolen during the robbery. When the car was recovered, he identified a woman's coat found in the trunk as being similar to one worn by defendant's girlfriend. Alicia Williams, the seven-year-old daughter of defendant's girlfriend, testified that she heard defendant talking about robbing a store, and saw him put on a ski mask. She identified a mask found in her home as that used by defendant, and identified the coat found in Kinsey's trunk as one belonging to her mother. Viola Hoston, Alicia's grandmother, testified that she overheard defendant state that if the market had been robbed earlier, they could have gotten more money. Iana Wilder, defendant's witness, testified that defendant was at home with his mother on the night the robbery occurred.

The trial court found defendant guilty of armed robbery. The court indicated that while Kinsey's testimony alone was insufficient to sustain a conviction, that testimony, along with that given by Alicia and Hoston, established defendant's guilt beyond a reasonable doubt. Subsequently, defendant was sentenced to eight to twenty years in prison.

Defendant moved for an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973), to establish that trial counsel rendered ineffective assistance by failing to call Ebony

Bell as a witness. Defendant contended that Bell's testimony would have cast doubt on Hoston's motives for testifying as she did. The trial court denied the motion.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and that the representation so prejudiced the defendant that he was denied a fair trial. *People v Pickens*, 446 Mich 298, 313-314; 521 NW2d 797 (1994); *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). Counsel is presumed to have afforded effective assistance; to overcome that presumption, a defendant must show that counsel's failure to perform an essential duty resulted in prejudice. *People v Stubli*, 163 Mich App 376, 379; 413 NW2d 804 (1987).

Defendant argues that trial counsel's failure to call Bell as a witness constituted ineffective assistance because her testimony would have demonstrated that Hoston was prejudiced against him. We disagree. The trial court stated that the testimony that corroborated that given by Kinsey and established defendant's guilt beyond a reasonable doubt was given first by Alicia. Absent Hoston's testimony, the evidence was sufficient to sustain defendant's conviction. Had Bell testified, her testimony would not have made a difference in the outcome of the trial. Trial counsel's failure to call Bell did not deprive defendant of a substantial defense. *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995), modified in part on other grounds 453 Mich 902; 554 NW2d 899 (1996). Defendant has not overcome the presumption that counsel rendered effective assistance. *Stubli, supra*.

Defendant acknowledges that his minimum term was within the guidelines; nevertheless, he argues that his minimum sentence is disproportionate to his circumstances and those of the offense. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We disagree. A sentence that falls within the guidelines is presumptively proportionate. *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). Furthermore, because defendant does not specify how his sentence is disproportionate, this issue is waived for purposes of appellate review. *People v Hill*, 221 Mich App 391, 397; 561 NW2d 862 (1997).

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Michael J. Talbot