

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONOCCA SCOTT,

Defendant-Appellant.

UNPUBLISHED
December 19, 2000

No. 217607
Wayne Circuit Court
LC No. 98-008927

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial convictions for armed robbery, MCL 750.529; MSA 28.797, and felony-firearm, MCL 750.227b; MSA 28.424(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions arise out of an armed robbery that took place in the early morning hours near Harper and Seneca in the City of Detroit. Shortly after the robbery, police were able to apprehend defendant, and returned him to the scene where he was identified as one of the robbers. On appeal, defendant argues that trial counsel was ineffective for failing to challenge the identification evidence.

To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994).

Defendant was not prejudiced by counsel's failure to challenge the identification evidence. A prompt on-the-scene identification is a reasonable police practice that permits the police to immediately decide whether there is a reasonable likelihood that the suspect is connected to the crime and subject to arrest, or an unfortunate victim of circumstances. *People v Winters*, 225 Mich App 718, 727-728; 571 NW2d 764 (1997). Where the on-scene identification

* Circuit judge, sitting on the Court of Appeals by assignment.

procedure was proper, there was no basis for trial counsel to object to the in-court identification. Counsel was not ineffective.

Defendant also asserts that his sentence is disproportionate. Defendant's sentence was within the guidelines range and is presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant has failed to present any unusual circumstances that would overcome that presumption. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997).

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber