

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRITTANI WEDDINGTON and
ASIA WEDDINGTON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LEWIS WEDDINGTON,

Respondent-Appellant,

and

LORI WEDDINGTON,

Respondent.

UNPUBLISHED

April 6, 2001

No. 230081

Kent Circuit Court

Family Division

LC No. 99-064200

Before: Talbot, P.J., and Sawyer and F.L. Borchard*, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the family court order terminating his parental rights to the minor children under MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h). We affirm.

Respondent-appellant argues that he was denied the effective assistance of counsel because his attorney failed to object to the caseworker's testimony to the effect that respondent-appellant had been convicted of first-degree criminal sexual conduct and was not eligible for parole until 2022. Respondent-appellant maintains that, under the circumstances, the statutory ground for termination was required to be established by legally admissible evidence, see MCR 5.974(E)(1); *In re Snyder*, 223 Mich App 85, 89-90; 566 NW2d 18 (1997), and that the caseworker's testimony constituted inadmissible hearsay. See MRE 802.

Because respondent-appellant did not raise the issue of ineffective assistance of counsel in an appropriate motion in the trial court, appellate review is limited to the existing record.

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

People v Sharbnow, 174 Mich App 94, 106; 435 NW2d 772 (1989); *People v Armendarez*, 188 Mich App 61, 73-74; 468 NW2d 893 (1991). To establish ineffective assistance of counsel, respondent-appellant must show that counsel's performance was deficient and that he was prejudiced by the deficiency. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

The testimony at issue, concerning respondent-appellant's release date, involved information that was readily ascertainable by resort to sources whose accuracy could not reasonably be questioned and, therefore, was readily available to counsel. In this circumstance, counsel could reasonably have decided that there was no reason to object to the challenged testimony, hearsay or not, unless the testimony was inaccurate. It is not apparent from the record that the testimony was, in fact, inaccurate. Indeed, respondent-appellant does not dispute that he was convicted of first-degree criminal sexual conduct or that he was not eligible for parole until 2022. Accordingly, we conclude that respondent-appellant has not shown that counsel was deficient for failing to object to the challenged testimony.

Affirmed.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Fred L. Borchard