

STATE OF MICHIGAN
COURT OF APPEALS

In re TORRIA ALLEN, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TORRIA ALLEN,

Defendant-Appellant.

UNPUBLISHED

April 27, 2001

No. 220553

Wayne Circuit Court

Juvenile Division

LC No. 95-323163

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

MEMORANDUM.

Defendant appeals as of right the order committing her to the jurisdiction of the Family Independence Agency. We affirm.

Defendant was charged with criminal activity in seven petitions filed with the court. At a pretrial hearing, defendant accepted the prosecutor's offer to drop six of the charges if she pleaded guilty to one petition charging her with second-degree retail fraud. Defendant was advised of her rights, and stated that no promises or threats were made to induce the plea. The court accepted the plea, and at the dispositional hearing, committed defendant to the custody of the Family Independence Agency.

On appeal, defendant argues that she was denied the effective assistance of counsel where counsel failed to take the matter to trial and present a duress defense. We disagree.

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. The defendant must overcome a strong presumption that counsel's assistance constituted sound trial strategy. 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; 521 NW2d 797 (1994).

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

Defendant failed to present any evidence in support of a duress defense. In order to properly raise a duress defense, the defendant has the burden of producing some evidence from which a jury can conclude that the essential elements of duress are present. *People v Lemons*, 454 Mich 234, 246; 562 NW2d 447 (1997). A defendant must introduce evidence from which a jury could conclude that there was threatening conduct sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm, the conduct in fact caused that fear, the fear was operating upon the mind of the defendant at the time of the act, and defendant committed the act to avoid the threatened harm. *Id.*, 247.

There is no evidence that any person engaged in threatening conduct toward defendant. Defendant has failed to present the necessary evidence to show that she was deprived of the effective assistance of counsel.

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard