

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THEODORE R. WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

July 13, 2001

No. 223006

Wayne Circuit Court

LC No. 99-000818

Before: Saad, P.J., and Holbrook, Jr. and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with assault with intent to commit murder, MCL 750.83, and felony-firearm in connection with the shooting of complainant, to whom he owed money. Complainant denied confronting defendant or making demands for the money. He testified that when he stopped his van to speak with defendant, defendant approached the van and shot him in the arm. When he raised his arm and indicated that he and defendant should settle the matter with their fists, defendant shot him two more times. A witness for defendant testified that approximately two weeks before the shooting, he heard complainant threaten to kill defendant. Defendant testified that that on several occasions complainant threatened him and demanded money. He indicated that he shot complainant again because he was unsure of what complainant was doing when he raised his arm. On cross-examination, defendant acknowledged that he had approximately eight prior convictions for crimes involving theft or dishonesty. The jury convicted defendant of the lesser offense of assault with intent to do great bodily harm less than murder, and felony-firearm.

Assault with intent to do great bodily harm less than murder requires proof of: (1) an attempt or threat with force or violence to do corporal harm to another, i.e., an assault; and (2) a specific intent to do great bodily harm less than murder. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997).

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 counsel's performance resulted in prejudice. To demonstrate prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). Counsel is presumed to have afforded effective assistance, and a defendant bears the burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

A witness's credibility may be impeached with prior convictions only if the convictions satisfy the criteria set forth in MRE 609. Generally, evidence that a witness has been convicted of a crime is inadmissible unless the evidence has been elicited from the witness or established by public record during cross-examination. The crime must have contained: (1) an element of dishonesty or false statement, or (2) an element of theft, with punishment by imprisonment in excess of one year or by death, and with significant probative value on the issue of credibility. If the witness is the defendant in a criminal trial, the court must determine that the probative value of the evidence outweighs the prejudicial effect. Evidence of a conviction is inadmissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from confinement imposed for that conviction, whichever is later. MRE 609(a) and (c).

Defendant argues that trial counsel rendered ineffective assistance of counsel by failing to move to suppress his prior convictions, and that as a result he was denied a fair trial. We disagree and affirm defendant's convictions. Defense counsel did not object when the prosecutor referred to defendant's prior convictions; therefore, the trial court was not given an opportunity to exercise its discretion in the matter. *People v Rice (On Remand)*, 235 Mich App 429, 438-439; 597 NW2d 843 (1999). Eight of defendant's 11 prior convictions were stale, and thus inadmissible. MRE 609(c). Arguably, had defendant moved to suppress his prior record, the trial court would have concluded that two of the three remaining convictions, those for receiving or concealing stolen property over \$100, MCL 750.535; MSA 28.803, were admissible. MRE 609(a)(1). However, assuming arguendo that admission of evidence of defendant's prior convictions was error, the error is harmless. The jury was entitled to accept complainant's testimony and to reject that given by defendant. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). The evidence is sufficient to establish the elements of assault with intent to do great bodily harm less than murder. *Parcha, supra*. The reference to defendant's prior record was general and brief, and the prosecution did not refer to defendant's prior record during closing argument. We conclude that under the circumstances, correction of the error, if any, would not have altered the outcome of the proceedings. *Id.*, 247-248. (Text deleted.)

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy