

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY BROWN,

Defendant-Appellant.

UNPUBLISHED

October 23, 2001

No. 222671

Wayne Circuit Court

LC No. 98-014103

Before: Cooper, P.J., and Sawyer and Owens, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529, and felony-firearm, MCL 750.227b. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to fifteen to thirty years' imprisonment for the armed robbery conviction and two years' imprisonment for the felony-firearm conviction. The court also required restitution in the amount of \$15,535. Defendant appeals as of right. We affirm.

Defendant first argues he was denied effective assistance of counsel. Defendant did not move for a new trial below and his motion to remand for an evidentiary hearing was denied by this Court. Therefore, our review is limited to the existing record. *People v Johnson*, 144 Mich App 125, 129-130; 373 NW2d 263 (1985).

The general rule is that defense counsel's performance is presumed sufficient, and a defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that it was so prejudicial that it denied him a fair trial. *Id.* To establish prejudice, a defendant must demonstrate there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* at 302-303.

Defendant argues his trial counsel denied him the effective assistance of counsel by failing to attack the prosecution's pretrial procedure and the subsequent in-court identification. There exists nothing on the record to show that the identification procedures were so suggestive or conducive to irreparable misidentification that it denied him due process of law. See *People v Anderson*, 389 Mich 155, 169; 205 NW2d 461 (1973). Defense counsel argued the suggestiveness of the identification procedure several times throughout trial, as well as moved

for acquittal, and nothing required defense counsel to object to the in-court identification. Nothing on the record shows that counsel's performance fell below an objective standard of reasonableness. Likewise, nothing on the record shows that a reasonable probability existed that if counsel had acted differently, the outcome of the trial would have been different.

Defendant next argues there was insufficient evidence to support his conviction. Specifically, defendant argues that the testimony of the complaining witness and the eyewitness were unreliable and incredible and thus were insufficient to support his conviction. We disagree.

In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution and determine whether the evidence was sufficient to show that the essential elements of the crime were proved beyond a reasonable doubt. *People v Lee*, 243 Mich App 163, 167; 622 NW2d 71 (2000).

In reviewing the sufficiency of the evidence, all conflicts with regard to the evidence are resolved in favor of the prosecution and this Court will not interfere with the fact finder's role of determining the weight or credibility of the evidence. It is clear the trial court resolved the issue of the credibility and reliability of the witnesses in favor of the prosecution. The trial judge was in the best position to judge the credibility of the witnesses, and this Court will not interfere with that determination. *People v Grainger*, 117 Mich App 740, 750; 324 NW2d 762 (1982).

Affirmed.

/s/ Jessica R. Cooper
/s/ David H. Sawyer
/s/ Donald S. Owens