

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

GHEORGHE GHEORGHITA,

Defendant-Appellant.

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UNPUBLISHED

November 27, 2001

No. 221283

Wayne Circuit Court

Criminal Division

LC No. 86-002949

Before: Zahra, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, 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. He was sentenced to 80 to 120 months' imprisonment for the assault conviction and a consecutive two-year term for the felony firearm conviction. He appeals as of right. We affirm.

I

Defendant claims that he was denied his constitutional right of confrontation because the trial court limited defense counsel's cross-examination of Detroit Police Officer James Lashbrook concerning whether Lashbrook harbored any bias or prejudice against defendant. We find no merit to this issue.

The trial court sustained two prosecutorial objections to defense counsel's cross-examination, once on the basis of hearsay and the other because the form of the question was improper. Defendant has not provided any support for a claim that the trial court ruled incorrectly on either of the objections. Further, defendant has not demonstrated how his cross-examination was further curtailed, nor does he indicate what questions he was denied the opportunity to explore through cross-examination. Accordingly, we reject defendant's argument that his right of confrontation was violated.

II

Next, defendant claims that he was denied his right to due process because of improper remarks by the prosecutor during closing arguments. We review claims of prosecutorial misconduct case by case, examining the pertinent remarks in context, to determine whether the

defendant received a fair and impartial trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995); *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995). However, because defendant failed to preserve this issue with an appropriate objection to the challenged remarks, he must demonstrate plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000).

Defendant has failed to demonstrate that anything stated by the prosecutor constituted plain error affecting defendant's substantial rights. Defendant does not cite any specific remarks that he claims were improper. "A party may not merely state a position and then leave it to this Court to discover and rationalize the basis for the claim." *People v Griffin*, 235 Mich App 27, 45; 597 NW2d 176 (1999).

### III

Next, defendant argues that he is entitled to resentencing because of errors at his sentencing proceeding. We disagree. First, defendant maintains the trial court misinterpreted the instructions for scoring a prior record variable. Even if we assume the trial court erred in scoring this offense variable, defendant is not entitled to relief. The alleged error did not affect the accuracy of the information considered by the trial court. Moreover, defendant's sentence is not otherwise disproportionate. Thus, this issue does not present a cognizable claim for relief on appeal. *People v Raby*, 456 Mich 487, 497-498; 572 NW2d 644 (1998); *People v Mitchell*, 454 Mich 145, 176-178; 560 NW2d 600 (1997); *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998).

Also without merit is defendant's claim that the trial court failed to articulate reasons for the sentence imposed on defendant. The trial court's reliance on the sentencing guidelines was sufficient to satisfy the articulation requirement. *People v Broden*, 428 Mich 343, 349-351; 408 NW2d 789 (1987).

We are also satisfied that the trial court complied with MCR 6.425(D)(2)(a). The trial court inquired on the record whether defendant had an opportunity to review the presentence report. Defense counsel responded affirmatively. Defendant never indicated anything to the contrary, either in response to the court's express inquiry of him or later during allocution. Furthermore, defendant does not allege that the presentence report contained any inaccurate or irrelevant information. Thus, this issue does not warrant appellate relief.

Defendant also complains that he was not adequately advised of his appellate rights at sentencing in accordance with MCR 6.425(E)(1). However, because appellate counsel was timely appointed and a timely appeal by right was filed, defendant has failed to demonstrate any prejudice in connection with this issue.

### IV

Defendant next argues that he was denied the effective assistance of counsel. Because this issue was not raised in a motion for a new trial or evidentiary hearing in the trial court, our review is limited to the existing trial court record. *People v Hoag*, 460 Mich 1, 5; 594 NW2d 57 (1999); *People v Ginther*, 390 Mich 436, 442-443; 212 NW2d 922 (1973); *People v Barclay*, 208

Mich App 670, 672; 528 NW2d 842 (1995). The standard of review for a claim of ineffective assistance of counsel was discussed in *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000):

For a defendant to establish a claim that he was denied his state or federal constitutional right to the effective assistance of counsel, he must show that his attorney's representation fell below an objective standard of reasonableness and that this was so prejudicial to him that he was denied a fair trial. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). As for deficient performance, a defendant must overcome the strong presumption that his counsel's action constituted sound trial strategy under the circumstances. [*Mitchell, supra* at 156]. As for prejudice, a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different . . . ." *Id.* at 167.

We reject defendant's claim that defense counsel was ineffective for not moving for a new preliminary examination after learning that the original preliminary examination transcript and reporter's notes had been lost or destroyed. First, defendant was not entitled to a new preliminary examination on the same charge. *People v Skowronek*, 57 Mich App 110, 113-114; 226 NW2d 74 (1974). Second, defendant cannot demonstrate prejudice because there is no basis in the record for concluding that defendant would not have been bound over on the same charges had a second preliminary examination been held.

Defendant's claim that trial counsel failed to adequately prepare for trial is not supported by the record. Furthermore, defendant does not allege how further preparation would have benefited his case. Therefore, ineffective assistance of counsel resulting from a lack of trial preparation has not been shown.

Defendant also asserts that the only reason he did not testify at trial was that counsel erroneously advised him that he would be impeached with his prior conviction for assault with intent to do great bodily harm. We conclude that this issue does not support a finding of ineffective assistance of counsel. It is not apparent from the record that such advice was given. However, even if we assume counsel erroneously advised defendant in this regard, a mistake by an otherwise competent lawyer does not justify reversal unless, but for counsel's mistake, the defendant would have had a reasonably likely chance for acquittal. *Mitchell, supra* at 156. Defendant cannot meet this standard. Defendant's statement to the police in which he denied assaulting the victim and claimed that he witnessed two other men shoot her was admitted into evidence. Defendant does not indicate that he would have provided any different testimony or explain how he could have expanded upon his statement. Thus, he has not demonstrated that, had he testified, there is a reasonable likelihood that the result of the trial would have been different.

We also find meritless defendant's claim that counsel was ineffective because she failed to assert certain objections. We have reviewed the record and find no indication that the prosecutor attempted to introduce defendant's prior conviction. Therefore, no error can result from the failure to object to defendant's prior conviction. Defendant has also failed to demonstrate that trial counsel was ineffective for failing to object to the prosecutor's remarks

during closing argument. The prosecutor's remarks during closing argument were not improper. *People v Ullah*, 216 Mich App 669, 678; 550 NW2d 568 (1996); *People v Lee*, 212 Mich App 228, 255; 537 NW2d 233 (1995); *People v Lawton*, 196 Mich App 341, 353; 492 NW2d 810 (1992).

The record also belies defendant's claim that trial counsel failed to attack the credibility of the victim. The record reveals numerous attempts by counsel to challenge the victim's credibility. The fact that this strategy did not work does not constitute ineffective assistance of counsel. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996).

Defendant also argues that he has been denied the effective assistance of appellate counsel, because appellate counsel declined to raise certain issues that he requested. We disagree. Appellate counsel is not required to raise every arguably meritorious issue. *People v Reed*, 449 Mich 375, 387, 402; 535 NW2d 496 (1995). Furthermore, defendant has taken full advantage of the opportunity to raise the additional issues in his Standard 11 brief. We have considered these issues and conclude that they are wholly without merit. Thus, defendant has not demonstrated that he was prejudiced by appellate counsel's failure to raise the additional issues.

Finally, defendant has not demonstrated that the cumulative effect of several errors denied him effective assistance of counsel. We further conclude that defendant was not deprived of a fair trial. *People v Cooper*, 236 Mich App 643, 659-660; 601 NW2d 409 (1999); *Griffin, supra*; *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998).

Affirmed.

/s/ Brian K. Zahra  
/s/ Harold Hood  
/s/ William B. Murphy