

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD ROBINSON, JR.,

Defendant-Appellant.

UNPUBLISHED

January 8, 2002

No. 224958

Wayne Circuit Court

Criminal Division

LC No. 99-006956

Before: K.F. Kelly, P.J., and Hood and Doctoroff, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carrying a weapon in a motor vehicle. MCL 750.227. In accord with MCL 769.12, the trial court sentenced defendant as a fourth habitual offender to a term of one to five years' imprisonment. He appeals as of right. We affirm.

First, defendant argues that he was denied the effective assistance of counsel. "In order to establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that, but for defense counsel's errors, there was a reasonable probability that the result of the proceeding would have been different." *People v Lee*, 243 Mich App 163, 184-185; 622 NW2d 71 (2000). A defendant must affirmatively demonstrate that counsel's performance was objectively unreasonable and so prejudicial as to deprive him of a fair trial. *Id.* at 185. Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

In this case, defendant contends that trial counsel erred because he failed to obtain the transcript of an earlier parole hearing. Defendant maintains that trial counsel could have used the transcript to impeach the testimony of a prosecution witness. It is not apparent from the record, however, that the transcript of the parole hearing would have definitively demonstrated that the witness' trial testimony was inconsistent. Moreover, we are not convinced that the alleged inconsistencies involved matters that would have affected the outcome of the trial. Accordingly, defendant failed to demonstrate that he is entitled to relief because of the ineffective assistance of counsel.

Next, defendant argues that the evidence was insufficient to support his conviction for carrying a weapon in a motor vehicle. This Court reviews de novo challenges to the sufficiency

of the evidence at trial. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). In determining whether sufficient evidence has been presented to sustain a conviction, we are required to view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

To support a conviction for carrying a weapon in a vehicle, the prosecution must show: (1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) that the defendant knew or was aware of its presence, and (3) that he was "carrying" it. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999).

Two police officers testified at trial that they stopped defendant after they observed defendant driving erratically and traveling in excess of the speed limit. Further, both officers testified that they observed a gun in the waistband of defendant's pants and that defendant struggled to keep it. This evidence was clearly sufficient to support a conclusion that defendant knew about the gun. Although defendant asserts that the officers were not credible, this Court gives deference to a trial court's unique qualification to assess credibility of witnesses and will generally not overturn a conviction on this basis. *People v Hughes*, 217 Mich App 242, 248; 550 NW2d 871 (1996).

Furthermore, we reject defendant's contention that a new trial is required because the verdict is against the great weight of the evidence. A new trial may be granted based on the great weight of the evidence only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998).

In the case at bar, given the testimony of the officers who testified at trial, the evidence did not preponderate heavily against the verdict. While defendant contends that the officers' testimony was not credible, this Court defers to the factfinder's superior ability to judge the credibility of the witnesses brought on to testify before it. *People v Ulman*, 244 Mich App 500, 511; 625 NW2d 429 (2001). Indeed, "it is well settled that this Court may not attempt to resolve credibility questions anew." *Gadomski, supra* at 28. We do not find error in this regard.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Harold Hood
/s/ Martin M. Doctoroff