

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

March 22, 2002

No. 228142

Wayne Circuit Court

LC No. 99-002817

Before: Neff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant was charged with one count of first-degree premeditated murder, two counts of assault with intent to murder, carjacking, and possession of a firearm during the commission of a felony. Following a jury trial, defendant was convicted of two counts of assault with intent to do great bodily harm, MCL 750.84, and one count of felony-firearm, MCL 750.227b.<sup>1</sup> He was sentenced as an habitual offender, second offense, MCL 769.10, to a prison term of 8-1/2 to fifteen years for the assault convictions and two years for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's sole argument on appeal is that he was denied the effective assistance of counsel at trial because defense counsel did not understand the principle of aiding and abetting. Defendant did not move in the trial court for an evidentiary hearing or a new trial based on ineffective assistance of counsel. Therefore, this Court's review is limited to any errors apparent on the record. *People v Noble*, 238 Mich App 647, 661; 608 NW2d 123 (1999). To establish ineffective assistance of counsel, a defendant must show: (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms; (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different; and (3) that the proceedings were fundamentally unfair or unreliable. *People v Rodgers*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 221310, issued December 14, 2001), slip op p 6. Effective assistance of counsel is presumed, and the defendant bears the heavy burden of proving otherwise. *People v Rocky*, 237 Mich App 74, 76; 601 NW2d 887 (1999). Counsel's performance is measured against an objective standard of reasonableness without the benefit of hindsight. *People v LaVearn*. 448 Mich 207, 216; 528 NW2d 721 (1995).

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<sup>1</sup> Defendant was acquitted of the murder and carjacking charges.

It is clear from the record that the prosecution's express theory of the case was that defendant was the actual aggressor and shooter during the incident and that his codefendant at trial aided and abetted. In light of the evidence brought against defendant at trial, it was reasonable for defense counsel to present a defense that would acquit defendant of the higher charges but may have also risked a conviction of the lesser offenses. This Court will not substitute its judgment for that of counsel regarding matters of trial strategy. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999).

To the extent that defendant argues that defense counsel did not understand the principle of aiding and abetting, there is nothing on the record to indicate that defense counsel's performance was so ineffective that there is a reasonable probability that, but for counsel's alleged errors, the result of the proceedings would have been different. Further, there is nothing apparent on the record to indicate that counsel's performance rendered the proceedings fundamentally unfair or unreliable.

Finally, defendant argues that he was prejudiced by the admission of his codefendant's statement. Because defendant did not raise the issue of the admission of the statement in his statement of questions presented, this Court need not address it. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). Nonetheless, any error in the admission of the statement was harmless because defendant has not shown that he suffered any prejudice as a result of admission of the evidence. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Affirmed.

/s/ Janet T. Neff  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot