

STATE OF MICHIGAN
COURT OF APPEALS

In re M. B., Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

MORRIS BROADNAX,

Respondent-Appellant.

UNPUBLISHED

April 23, 2002

No. 223688

Wayne Juvenile Court

LC No. 96-342520

Before: Gage, P.J., and Griffin and G. S. Buth*, JJ.

PER CURIAM.

Respondent appeals by right from an order of disposition making him a ward of the court and ordering placement outside his father's home following an adjudication that he violated his probation. We affirm.

Respondent admitted responsibility to a charge of larceny from a person and was placed on probation in his own home. He was later charged with violation of probation for leaving home without his father's consent. The court found him guilty of violating his probation. Following a dispositional hearing, the court took temporary custody of respondent and ordered that he be placed in a suitable facility outside the home.

Respondent's sole claim on appeal is that trial counsel was ineffective for failing to call him or his father as a witness at the violation of probation hearing. Because respondent failed to raise his claim of ineffective assistance of counsel below, review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

To the extent respondent's claim is based on the court's decision to revoke his probation and remove him from his home, respondent has waived this issue by failing to provide a transcript of the dispositional hearing. *People v Anderson*, 209 Mich App 527, 535; 531 NW2d 780 (1995). The appellant is obligated to produce a transcript of the full record of all proceedings in the trial court unless excused from doing so, MCR 7.210(B)(1), and this Court "will not conclude that the trial court erred in making a ruling where the appellant has failed to

* Circuit judge, sitting on the Court of Appeals by assignment.

secure a transcript of the hearing at which that ruling is made.” *Brown v Jo-Jo-Ab, Inc*, 191 Mich App 208, 210; 477 NW2d 121 (1991).

To the extent respondent’s claim is based on the court’s finding that he violated his probation, we find no basis for concluding that he was denied effective assistance of counsel. Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy and this Court will not substitute its judgment for that of counsel regarding matters of trial strategy. *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999). Counsel can be found ineffective for failing to call witnesses or present other evidence only if the failure deprives the defendant of a substantial defense, i.e., one that might have made a difference in the outcome of the proceedings. *People v Bass (On Rehearing)*, 223 Mich App 241, 252-253; 565 NW2d 897 (1997); *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). Because the record is silent regarding the testimony respondent or his father would have offered at the violation of probation hearing if called, respondent has not shown that a reasonable probability exists that, if counsel had called him or his father, the outcome of the hearing would have been different. *People v Avant*, 235 Mich App 499, 508; 597 NW2d 864 (1999).

Affirmed.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth