

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE JAMES MEEUWENBERG,

Defendant-Appellant.

UNPUBLISHED

June 7, 2002

No. 232180

Delta Circuit Court

LC No. 00-006572-FH

Before: Griffin, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of operating under the influence of liquor (OUIL), third offense, MCL 257.625(8)(c), and resisting and obstructing a police officer, MCL 750.479. The trial court sentenced him as a fourth felony offender, MCL 769.12, to concurrent terms of forty-six months' to fifteen years' imprisonment for the OUIL conviction and thirty months' to fifteen years' imprisonment for the resisting and obstructing conviction. Defendant appeals as of right. We affirm.

Defendant's sole claim on appeal is that he was denied effective assistance of counsel when his attorney failed to timely object to the testimony of a witness who worked at the county jail suggesting that defendant had previously been jailed while intoxicated. Because defendant failed to make a testimonial record concerning counsel's performance, this Court's review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; ___ NW2d ___ (2002). If the trial court has made findings of fact, they are reviewed for clear error. *Id.* The question whether the facts constitute a violation of the defendant's constitutional right to effective assistance of counsel is reviewed de novo. *Id.*

Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *LeBlanc, supra* at 4. To establish ineffective assistance of counsel, a defendant must demonstrate that trial counsel's performance was objectively unreasonable and that the defendant was prejudiced by counsel's defective performance. *People v Mitchell*, 454 Mich 145, 164; 560 NW2d 600 (1997). With regard to deficient performance, a defendant must overcome the presumption that the challenged action or inaction was sound trial strategy. *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996). To establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's error, the result of the

proceedings would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000).

On this record, defendant was not denied effective assistance of counsel. Defendant has failed to demonstrate that counsel's performance was objectively unreasonable. Contrary to defendant's assertion, the witness' testimony did not establish that defendant had been in jail on numerous occasions. Further, defense counsel successfully stopped the prosecutor's questions about the witness' past contacts with defendant while defendant was intoxicated. To the extent that the witness returned to the topic of his prior contacts with defendant, the answer was non-responsive to the prosecutor's question and defense counsel's failure to object to the answer was sound trial strategy. Moreover, even assuming that counsel's representation was deficient, defendant was not prejudiced by counsel's performance. The evidence against defendant was overwhelming and it is not reasonably likely that the result of the trial would have been different had counsel objected to the witness' testimony. In the absence of a serious mistake by defense counsel or any prejudice against the defense, we decline to remand for a new trial.

Affirmed.

/s/ Richard Allen Griffin

/s/ Harold Hood

/s/ David H. Sawyer