

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY COKLOW,

Defendant-Appellant.

UNPUBLISHED

July 23, 2002

No. 232666

Wayne Circuit Court

LC No. 00-003676-01

Before: Talbot, P.J., and Cooper and D.P. Ryan*, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial convictions for assault with intent to commit great bodily harm less than murder, MCL 750.84, carjacking, MCL 750.529a, armed robbery, MCL 750.529, and felony-firearm, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant asserts that he was denied the effective assistance of counsel due to counsel's failure to move to suppress identification testimony based on a tainted lineup. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defendant claims that the lineup was tainted because the other participants were taller than he was. Physical differences between defendant and the other lineup participants goes to the weight of the identification, and not its admissibility. *People v Sawyer*, 222 Mich App 1, 3; 564 NW2d 62 (1997). Here, the lineup participants sat on a bench. Trial counsel argued that the lineup was meaningless, addressing the weight of the evidence. Where the trial court found that the lineup was fair, and there was an

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

independent basis for the identification, there is no showing that the court would have granted a motion to suppress had it been filed. *People v Gray*, 457 Mich 107; 577 NW2d 92 (1998).

Affirmed.

/s/ Michael J. Talbot

/s/ Jessica R. Cooper

/s/ Daniel P. Ryan