

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID WAYNE NEUMANN,

Defendant-Appellant.

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UNPUBLISHED

August 16, 2002

No. 224906

Schoolcraft Circuit Court

LC No. 99-006196-FH

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of fourth-degree fleeing and eluding a police officer, MCL 257.602a(2), and the trial court sentenced him as a fourth-felony offender, MCL 769.12, to two to ten years' imprisonment. Defendant now appeals as of right. We affirm.

At trial, state police trooper Grel Rousseau testified that at approximately 2:00 a.m. on February 23, 1999, he and his partner received a dispatch about a bar fight. They drove to the bar in a fully marked patrol car and as they pulled in the parking lot, several people immediately ran to their snowmobiles and drove off. The troopers turned on the siren and the overhead light, wigwag lights, and flashing lights and started pursuing the snowmobiles. Two of the machines, one of which was driven by defendant, lagged behind the others and stopped at an intersection. However, when an officer gestured for them to stop, they took off again. After being chased for about a half mile, both operators lost control. Defendant righted his snowmobile and was attempting to start it when Rousseau approached him and placed him under arrest.

The prosecutor asked Rousseau to explain how he identified defendant as one of the snowmobile operators and the trooper responded that defendant showed him his parole slip. The defense theory was that defendant was unaware the police were trying to stop him.

Defendant's sole claim on appeal is that he was denied the effective assistance of counsel when his attorney failed to object to the prosecutor's questions eliciting evidence of defendant's parole status. Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). 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).

A defendant must also overcome the presumption that the challenged action or inaction was sound trial strategy. *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996). Because defendant failed to make a testimonial record in the trial court in connection with a motion for a new trial or an evidentiary hearing, this Court's review is limited to the facts contained on the record. *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987).

Defendant was not denied effective assistance of counsel on this record. Defendant's parole status was a fundamental part of his defense theory. Specifically, it was his contention that he knew he was violating his parole by drinking at the bar and he knew that the police had been called to break up a fight, so he left the parking lot just as they arrived. According to defendant, he did not realize until his arrest that the troopers had been pursuing him instead of remaining at the bar. Rousseau's testimony about defendant's parole status was consistent with this theory. Because counsel's failure to object was a matter of trial strategy, reversal is not required. *Johnson, supra* at 124.

Affirmed.

/s/ Helene N. White

/s/ Janet T. Neff

/s/ Kathleen Jansen