

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OMAR BEY,

Defendant-Appellant.

UNPUBLISHED

August 17, 2004

No. 246981

Wayne Circuit Court

LC No. 01-008017-01

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial convictions for felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, attempted possession of a controlled substance, MCL 333.7403(2)(a)(v), and felony-firearm, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant asserts that he was denied the effective assistance of counsel when his trial attorney failed to file a motion to suppress. 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); *People v Kevorkian*, 248 Mich App 373, 411; 639 NW2d 291 (2001).

There was no basis for trial counsel to move to suppress the evidence. In *California v Hodari D*, 499 US 621, 625-627; 111 S Ct 1547; 113 L Ed 2d 690 (1991), the Supreme Court held that a seizure does not occur until an officer physically detains a suspect. Where a person discards an object during a pursuit before he is actually seized, the object may not be suppressed as the fruit of an illegal detention. *People v Lewis*, 199 Mich App 556, 560; 502 NW2d 363 (1993). Counsel was not required to advocate a meritless position. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Defendant also asserts that his convictions for carrying a concealed weapon and felony-firearm violate the Double Jeopardy Clause. This argument was rejected by our Supreme Court in *People v Sturgis*, 427 Mich 392; 397 NW2d 783 (1986). The Court held that the Double Jeopardy Clauses of the United States and Michigan constitutions do not bar a concealed

weapons conviction and a felony-firearm conviction arising from a single criminal episode when the felony-firearm conviction is based on another felony and the concealed weapons offense is not the predicate of the felony-firearm offense. The Court rejected the argument that the two statutes served the same social purpose. *Id.*, 409-410. Contrary to defendant's request, this Court cannot overrule Supreme Court precedent. *People v Mitchell*, 428 Mich 364, 369; 408 NW2d 798 (1987).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly