

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EDWARD HOUSTON, a/k/a OTIS
LEE HOUSTON,

Defendant-Appellant.

UNPUBLISHED
September 30, 2004

No. 247347
Kent Circuit Court
LC No. 02-008234-FC

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of three counts of criminal sexual conduct in the first degree (CSC I), the victims being under thirteen years of age, MCL 750.520b(1)(a), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that trial counsel rendered ineffective assistance by calling as a defense witness a medical social worker who testified that his daughter reported that he sexually abused her, and by failing to argue for leniency at sentencing. We disagree.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). Counsel's deficient performance must have resulted in prejudice. To demonstrate prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Id.* at 600. Counsel is presumed to have afforded effective assistance. The defendant bears the burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Defendant did not move for a new trial or an evidentiary hearing; thus, our review is limited to mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). Decisions regarding what evidence to present and the questioning of witnesses are matters of trial strategy. *Rockey, supra*. We do not substitute our judgment for that of trial counsel on matters of trial strategy. *People v Rice (On Remand)*, 235 Mich App 429,

445; 597 NW2d 843 (1999). Counsel's strategy was to attack the complainants' credibility and to demonstrate that they had given inconsistent statements regarding the alleged abuse. The social worker's testimony furthered this strategy. Nevertheless, the trial court was entitled to conclude that the complainants' testimony, while inconsistent in some respects, was credible and established the elements of the charged offenses. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989).

Counsel's decision to present the social worker's testimony did not constitute prejudice. Defendant has not shown that, but for counsel's alleged error, it is reasonably probable that the result of the proceedings would have been different. Similarly, he has not shown that, but for counsel's failure to argue for leniency at sentencing, it is reasonably probable that the trial court would have imposed more lenient sentences. *Carbin, supra*. Defendant has not overcome the presumption that he was afforded effective assistance of counsel. *Rockey, supra*.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood