STATE OF MICHIGAN

COURT OF APPEALS

In re DUSTIN RAY HALE.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

DUSTIN RAY HALE,

Respondent-Appellant.

UNPUBLISHED
October 25, 2007

No. 272724
Kalamazoo Circuit Court
LC No. 06-000050-DL

Before: Owens, P.J., and Bandstra and Davis, JJ.

MEMORANDUM.

Following an adjudication hearing, respondent (DOB 10-19-90) was found guilty of criminal sexual conduct in the second degree, MCL 750.520c(1)(a). At a disposition hearing, he was put on probation and placed with his mother. Respondent appeals as of right. We affirm.

Respondent first argues that the trial court erred in finding that the victim of the crime, a five-year-old child, was not competent to testify. Defense counsel had no questions for the victim regarding competency, and did not object when the judge found her competent. Accordingly, this issue has been waived. See *People v Cobb*, 108 Mich App 573, 575; 310 NW2d 798 (1981).

Respondent also argues that the failure to object constituted ineffective assistance of counsel. To establish this claim, respondent would have to show that the results of the proceedings would have been different if his attorney had objected. See *Strickland v Washington*, 466 US 668, 687, 690, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984). Thus, respondent would also have to establish that the trial court abused its discretion in concluding that the witness was competent. See *People v Watson*, 245 Mich App 572, 583; 629 NW2d 411 (2001).

MRE 601 states that a witness is competent to testify unless the court determines that the witness does not have "sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably." Here, the child witness initially misidentified truthful statements and untruthful statements, but indicated that she did not understand the words being used to connote truth and lies. The court then had her identify a time when she got into trouble and was

"naughty," and she said that she had kicked the bed. She then said "[t]hat's lying" when the court inquired "[w]hat if you said, oh, mom, I didn't kick the bed, my brother kicked the bed." She then correctly said that the court would be "lying" if he incorrectly said that her headband was black, his robe was white, she was 12 years old, and there was a snowman outside. She correctly said that the court would *not* be "lying" if he said the robe was black, there were trees and flowers outside, and that she was five years old. Moreover, she said she knew what lying was, and promised that she would not be lying when she testified, and that she would say only things that were true or real.

Once the trial court found a term that the child clearly understood regarding lying and telling the truth, she had no trouble telling the difference. Moreover, her promise to tell the truth reflected a sense of obligation to tell the truth. Thus, respondent has failed to establish any abuse of discretion in the trial court's conclusion that the witness had the capacity and sense of obligation to testify truthfully and understandably. Further, trial counsel was not ineffective in failing to raise a meritless objection in this regard. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).

We affirm.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Alton T. Davis