STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 11, 2007
v	No. 273408 Mecosta Circuit Court
CHARLES JOSEPH SPACHER, Defendant-Appellant.	LC No. 05-005658-FH

Before: Bandstra, P.J., and Meter and Beckering, JJ.

PER CURIAM.

Defendant was convicted by a jury of failure to pay child support, MCL 750.165. The trial court sentenced him to 36 months of nonreporting probation and to time served of 263 days in jail. The court also ordered defendant to pay $77,104.73 in child support. He appeals as of right. We affirm.

I. Appellate Counsel's Brief

Defendant argues that MCL 750.165, as a strict-liability offense, violates constitutional due process principles because the penalty for a violation is not relatively small and a conviction severely harms his reputation by portraying him as a "deadbeat dad." Defendant concedes that he did not preserve this due process argument by raising it below and that he must therefore establish a plain error affecting his substantial rights. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

This Court rejected defendant's argument in *People v Adams*, 262 Mich App 89, 98-99; 683 NW2d 729 (2004), explaining:

> With regard to the severity of the punishment provided, we acknowledge that penalties for public-welfare strict-liability crimes are generally "relatively small" and do no "grave damage to an offender's reputation." [*People v*] *Lardie*, [452 Mich 231, 255; 551 NW2d 656 1996, overruled in part on other grounds in *People v Schaefer*, 473 Mich 418 (2005)], quoting *Staples v United States*, 511 US 600, 617-618; 114 S Ct 1793; 128 L Ed 2d 608 (1994). However, in *People v Motor City Hosp & Surgical Supply, Inc*, 227 Mich App 209, 210; 575 NW2d 95 (1997), this Court upheld a strict-liability crime despite a potential punishment of four years' imprisonment and a $30,000 fine. Here, the maximum potential

> punishment is imprisonment for four years or a $2,000 fine. MCL 750.165(1). Although four years' imprisonment may seem severe, especially given that imprisonment will eliminate any ability of the defendant to pay support while he is incarcerated, the statute does afford the defendant a chance to redeem himself before a sentence is imposed. If an obligor who defied a support order by failing to seek a modification and choosing instead to just not pay fails to satisfy the bond conditions, the imposition of up to a four-year sentence is not severe; instead, at that point, the defendant has repeatedly demonstrated to the court that he will not adhere to the court order, and imprisonment is justified.

See also *People v Westman*, 262 Mich App 184, 190-191; 685 NW2d 423 (2004), overruled in part on other grounds in *People v Monaco* 474 Mich 48; 710 NW2d 46 (2006).

We are bound to follow this Court's decisions in *Adams* and *Westman*, MCR 7.215(J)(1), and we are not persuaded by defendant's argument that *Adams* was wrongly decided. Accordingly, we reject defendant's due process challenge.

II. Defendant's Supplemental Brief.

Defendant raises several issues in a supplemental brief, which, we note, is difficult to decipher and does not include a statement of questions presented for appeal. We find no merit to defendant's supplemental issues.

Defendant's first issue is labeled as a "void for vagueness" challenge to the constitutionality of MCL 750.165, but defendant substantively argues that his conviction is invalid because he never received notice of the underlying support action.

MCL 750.165(2) specifically provides that "[t]his section does not apply unless the individual ordered to pay support appeared in, or received notice by personal service of, the action in which the support order was issued." Thus, evidence that the defendant appeared in or received notice by personal service of the action in which the support order was issued is a necessary element of a conviction under MCL 750.165. *People v Monaco*, 262 Mich App 596, 606; 686 NW2d 790 (2004), reversed in part on other grounds 474 Mich 48 (2006).

Defendant concedes that "[i]t is a fact that [he] did receive notice of the Summons and Complaint in the [support] matter . . . ." The basis for defendant's argument on appeal is that there was no evidence that he was notified of subsequent hearings in the support action or that he received a copy of the actual support order. Because defendant did not raise this argument in the trial court, it is unpreserved, and our review is under the plain error doctrine. *Carines*, *supra* at 763.

The purpose of a summons and complaint is to provide notice of an action. Because MCL 750.165(2) only requires notice of "*the action* in which the support order was issued" (emphasis added) and because defendant acknowledges that he received the summons and complaint in the support action, he has not established a plain error with respect to the issue of notice.

Next, defendant argues that the support order issued in the underlying action was void, thereby defeating the court's subject-matter jurisdiction in that action. We review issues of subject-matter jurisdiction de novo. *Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004).

Defendant's jurisdictional argument is based on his claim that the underlying support order was issued without an actual hearing. Even if true, this does not establish a defect in subject-matter jurisdiction. Subject-matter jurisdiction

> "is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court in which it is pending, because of some inherent facts which exist and may be developed during the trial." [*Bowie v Arder*, 441 Mich 23, 39; 490 NW2d 568 (1992), quoting *Joy v Two-Bit Corp*, 287 Mich 244, 253-254; 283 NW 45 (1938).]

As previously indicated, defendant acknowledges that he received a copy of the summons and complaint in the underlying action, which involved a circuit court proceeding to establish defendant's paternity and to determine the amount of child support defendant was required to pay. The circuit court had subject-matter jurisdiction over that proceeding pursuant to the Paternity Act, MCL 722.711 *et seq.* Therefore, defendant's jurisdictional argument is without merit.

Defendant next argues that the prosecutor violated *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963), by failing to provide requested discovery.

In order to establish a *Brady* violation, a defendant must prove:

> (1) that the state possessed evidence favorable to the defendant; (2) that he did not possess the evidence nor could he have obtained it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. [*People v Lester*, 232 Mich App 262, 281; 591 NW2d 268 (1998).]

In this case, defendant makes no attempt to explain what favorable evidence the prosecutor possessed but failed to disclose, or how any such evidence would have made a difference in the trial. Therefore, defendant has clearly not established a *Brady* violation. *Id.*

Defendant also argues that reversal is required because the results of his 1990 DNA paternity test could not be located. In order to warrant reversal on this claim, defendant must show that the missing evidence was exculpatory or that law enforcement acted in bad faith. *People v Hanks*, 276 Mich App 91, 95; 740 NW2d 530 (2007). Defendant has not made any showing that the DNA test results were exculpatory. Further, considering that the paternity test was conducted as part of the 1990 support action, that the prosecution and law enforcement were not involved in that action, and that there is no claim that the prosecutor or law enforcement ever

possessed the test results, there is no basis for finding bad faith. Therefore, this issue is patently without merit.

Next, defendant argues that his double jeopardy rights were violated when the circuit court granted his motion to quash the district court bindover and dismissed the charge against him, but permitted the prosecutor to refile the charge. Because defendant did not raise this double jeopardy issue in the trial court, the issue is unpreserved and defendant must show a plain error affecting his substantial rights. *People v Meshell*, 265 Mich App 616, 628; 696 NW2d 754 (2005). "Double jeopardy considerations come into play only when a defendant has been placed in jeopardy, and that does not occur until a jury has been sworn, or, in a bench trial, until the first prosecution witness has been called." *People v George*, 114 Mich App 204, 209-210; 318 NW2d 666 (1982). Reinstituting charges after a successful motion to quash does not violate double jeopardy principles. *Id*. Therefore, a plain error has not been shown.

Next, defendant argues that defense counsel was ineffective. Because defendant did not raise this issue in the trial court in a motion for a new trial or request for an evidentiary hearing under *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973), our review is limited to mistakes apparent on the record. *People v Cox*, 268 Mich App 440, 453; 709 NW2d 152 (2005).

A defendant seeking a new trial on the ground that trial counsel was ineffective bears a heavy burden. First, the defendant must show that counsel's performance was deficient, which "requires a showing that counsel made an error or errors so serious that counsel was not performing as the 'counsel' guaranteed by the Sixth Amendment." *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001) (internal citation and quotation marks omitted). "In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy." *Id*. Second, the defendant must show that the deficient performance prejudiced the defense, i.e., he must demonstrate a reasonable probability that, but for counsel's error or errors, the result of the proceedings would have differed. *Id*. Defendant must also demonstrate that "the attendant proceedings were fundamentally unfair or unreliable." *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001).

Although defendant complains that defense counsel failed to follow up on discovery requests, ignored requests for documentation, allowed a motion to quash to "languish," and refused to pursue unidentified issues, defendant does not explain these claims with any particularity, nor does he explain how he was prejudiced by the alleged deficiencies. Further, defendant's generalized allegation that counsel "contested nothing, examined nothing, [and] did nothing" is not supported by the record. On the contrary, the record discloses that defense counsel successfully moved to quash defendant's original bindover to circuit court, filed another motion to quash after the charge against defendant was refiled, filed several motions in limine and was successful in excluding the amount of defendant's substantial child support arrearage at trial, and cross-examined witnesses and moved for a directed verdict at trial. Defendant has not identified any deficiency by counsel that denied defendant his right to a fair trial. Thus, defendant has not established a claim of ineffective assistance of counsel.

Finally, defendant argues that reversal is required because the trial court and the prosecutor both failed to respond to a bill of particulars and an interrogatory, and both allegedly had "unclean hands." Defendant does not cite any pertinent authority in support of these arguments, nor does he develop these claims. Defendant may not merely announce his position

and leave it to this Court to discover and rationalize the basis for his claims. *People v Hermiz*, 235 Mich App 248, 258; 597 NW2d 218 (1999), aff'd 462 Mich 71 (2000). Accordingly, he has abandoned these issues on appeal. See *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

Affirmed.

/s/ Richard A. Bandstra
/s/ Patrick M. Meter
/s/ Jane M. Beckering