STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 13, 2008
v	No. 268893 Jackson Circuit Court
ERIC LEE NORRIS, Defendant-Appellant.	LC No. 05-007373-FH

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of operating a motor vehicle while intoxicated (OWI), MCL 257.625(1), fourth-degree fleeing and eluding, MCL 257.602a(2), resisting and obstructing a police officer, MCL 750.81d(1), and two counts of resisting and obstructing a police officer causing injury, MCL 750.81d(2). We affirm defendant's convictions, but vacate his sentences and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions stem from a police chase and a subsequent altercation between defendant and Jackson City police officers. Officer Stanton observed a red SUV with one headlight traveling toward him. He initiated a u-turn and activated his overhead lights. The SUV sped away, ran through a flashing red light, and almost struck another vehicle. Stanton stopped the pursuit, radioed for assistance, and continued to drive in the direction the vehicle traveled. Approximately 20 minutes later, another officer radioed that the vehicle had been spotted. Defendant was apprehended after a lengthy altercation with the arresting officers. The prosecution also presented a videotape from Stanton's vehicle showing the initial chase and the latter part of defendant's arrest. The audio portion of the tape, which also contained conversations between officers throughout the event, was intermittent at times. Stanton testified that this occurred apparently because the transmission frequencies from the officer's microphones overlapped each other.

Defendant first argues that he was denied the effective assistance of counsel. However, because the trial court did not hold an evidentiary hearing, our review is limited to the facts on the record. *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000). "Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law. A judge first must find the facts, and then must decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel."

People v LeBlanc, 465 Mich 575, 579; 640 NW2d 246 (2002). We review questions of constitutional law de novo and the trial court's findings of fact for clear error. *Id*.

Effective assistance of counsel is presumed. *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004). In order to overcome this presumption, the defendant must first show that counsel's performance was deficient under an objective standard of reasonableness. *Id*. Defendant must also show that the deficiency was so prejudicial that he was deprived of a fair trial "such that there is a reasonable probability that but for counsel's unprofessional errors the trial outcome would have been different." *Id*. at 663-664.

To the extent that defendant claims that counsel rendered ineffective assistance by failing to seek suppression of defendant's statement on the ground that it was never made, the claim must be rejected. Whether a defendant ever made a statement is a question of fact to be resolved by the jury. *People v Neal*, 182 Mich App 368, 371; 451 NW2d 639 (1990); *People v Weatherspoon*, 171 Mich App 549, 554; 431 NW2d 75 (1988). Defendant was free to argue to the jury that he did not make the incriminating statement, and did so. Trial counsel was not ineffective merely because the fact-finder decided against defendant on this issue.

Defendant also argues that trial counsel was ineffective for failing to request an expert witness to show that the officer's videos were "tampered with" which would have discredited the officers' testimony. However, defendant offers no documentation or other evidence to support his contention that someone had tampered with the audio track of the video. He instead merely asserts this to be the case, despite the testimony that the recording portion of the tape was intermittent due to the interference caused by the officers' microphones. Even had counsel requested the appointment of an expert witness, it is likely that the trial court would have refused on the grounds that defendant could safely proceed to trial without one. See *People v Carnicorm*, 272 Mich App 614, 617; 727 NW2d 399 (2006).[1] Counsel was not required to make a meritless objection. *People v Thomas*, 260 Mich App 450, 457; 678 NW2d 631 (2004). Defendant asks this Court to take on faith his assertion that an expert would have actually discovered tampering. This is speculative. Defendant cannot show that, but for counsel's alleged error, the outcome of the trial would likely have been different. We find that defendant has failed to demonstrate ineffective assistance of counsel.

Defendant also argues that counsel was ineffective for failing to object to the scoring of 15 points for OV 19. MCL 777.49(b). Defendant's sole argument consists of an assertion that "trial counsel should have objected to the scoring of OV 19, interference with the administration of justice, because it is already covered in the offense itself." "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority. Such cursory treatment constitutes abandonment of the issue." *People v*

[1] We note that during the hearing concerning defendant's motion for a new trial or an evidentiary hearing on defendant's claim of ineffective assistance, appellate counsel raised the issue of whether an expert witness should have been requested. The trial court stated that it likely would not have ordered the appointment of an expert due to the expense and because "it's not unusual for the audio to be cutting out" on the videotapes.

Matuszak, 263 Mich App 42, 59; 687 NW2d 342 (2004) (quotations omitted). In any event, this argument lacks merit. See *People v Barbee*, 470 Mich 283, 288; 681 NW2d 348 (2004).

Defendant also contends that the trial court did not have substantial and compelling reasons for exceeding the guidelines scoring during sentencing. However, we note that the probation department filled out a sentencing information report (SIR) for defendant's resisting and obstructing conviction, MCL 750.81d(1), which is a class G offense. The department did not fill out a SIR for one of the resisting and obstructing causing injury convictions, MCL 750.81d(2), which are class F offenses. MCL 777.16d. The probation department should have scored this more serious offense. MCL 771.14(2)(e)(iii). The trial court, relying on the incorrect sentence information report, found it dispositive that the OV and PRV scoring in this case was far above that needed to place defendant highest grid for the class G offense; and relied in part on this finding to fashion defendant's sentence. However, defendant's OV and PRV scores would have not exceeded the maximum grid for a class F offense. See MCL 777.67 and MCL 777.68. Thus, the trial court clearly relied on erroneous information to sentence defendant. Our Supreme Court has held that "a sentence is invalid if it is based on inaccurate information." *People v Francisco*, 474 Mich 82, 89; 711 NW2d 44 (2006) (quotation omitted). We therefore find that defendant is entitled to resentencing due to this plain error.

We affirm defendant's convictions but vacate his sentences and remand for resentencing. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey