STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 24, 2008
v	No. 278317 Oakland Circuit Court
TONY BARNS PETERSON, Defendant-Appellant.	LC No. 2006-211228-FC

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224f, unlawfully driving away a motor vehicle, MCL 750.413, three counts of larceny of a firearm, MCL 750.357b, and six counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced as a fourth habitual offender, MCL 769.12, to concurrent terms of 15 to 40 years on all the convictions except the felony-firearm convictions, for which he received two-year sentences. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court abused its discretion in refusing to grant a 30-day adjournment on the date scheduled for trial. He asserts that the request was associated with his constitutional right to present a defense, that the failure to subpoena witnesses was a valid reason for the request, that the failure to secure the witnesses was not due to his negligence, and that there had been no other adjournments. While these are matters that must be considered in deciding such a motion, *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 810 (1992), a defendant is not entitled to relief unless he can demonstrate prejudice. *People v Pena*, 224 Mich App 650, 661; 569 NW2d 871 (1997), mod in part on other grounds 457 Mich 885 (1998). Moreover, MCL 768.2 provides that "[n]o adjournments, continuances or delays of criminal causes shall be granted by any court except for good cause shown . . . ."

Defendant's argument is without merit. Defense counsel stated that he and an investigator had repeatedly met with defendant and made numerous attempts to find every potential witness that defendant had named. One person was present to testify; others did not say what defendant had anticipated. Thus, defendant did not establish good cause for the adjournment. He also failed to show prejudice. He has not identified one witness who might have been called or who might have testified in his favor if an adjournment had been granted. Accordingly, defendant has not demonstrated any abuse of discretion.

Defendant next argues that he was provided ineffective assistance of counsel. He cites a failure to subpoena certain witnesses and a disclosure that defendant's version of the events had not been corroborated by witnesses he had identified.

This issue is also without merit. The present record, see *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007), indicates that defendant's trial counsel did not believe the additional witnesses would be helpful. The decision not to call a particular witness is a matter of trial strategy; and we will not substitute our judgment for that of counsel regarding matters of trial strategy. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004); *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004). Regarding counsel's comment, even if questionable, a judge in a bench trial is presumed to be able to decide a case based solely on the evidence properly admitted at trial. *People v Jones*, 168 Mich App 191, 194; 423 NW2d 614 (1988). Thus, defendant cannot establish that the outcome would have been different. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007).

Finally, defendant asserts that the victim's identification of him was incompetent and that the evidence to convict him of armed robbery and larceny of firearms was therefore insufficient. We disagree.

The victim identified defendant as the perpetrator at trial, acknowledging that he knew defendant as "Ron", but stating that defendant had come into the store on at least four prior occasions, and had been in the store for about an hour on the day of the robbery. Defendant suggests that the victim was not wearing his glasses, which is not supported by the record. Regardless, such evidence would give rise to a question of credibility that would be left to the trier of fact. *People v Givans*, 227 Mich App 113, 123-124; 575 NW2d 84 (1997).

There were no errors warranting relief.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael R. Smolenski
/s/ Deborah A. Servitto