

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DESMOND COOPER,

Defendant-Appellant.

UNPUBLISHED

July 1, 2008

No. 276657

St. Clair Circuit Court

LC No. 06-002056-FH

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

PER CURIAM.

Defendant appeals as of right his jury trial convictions of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), resisting and obstructing a police officer, MCL 750.81d(1), and maintaining a drug house, MCL 333.7405(d). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to concurrent terms of three to fifteen years' imprisonment for each conviction (to be served consecutively to sentences imposed on parole matters). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that his trial attorney's decision not to speak on behalf of defendant about mitigating circumstances that could have had an effect on his sentence amounted to the ineffective assistance of counsel. We disagree.

Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002). To prove ineffective assistance of counsel, the defendant must show that "(1) counsel's performance was below an objective standard of reasonableness under professional norms and (2) there is a reasonable probability that, if not for counsel's errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable." *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007).

Defendant's trial counsel did object to the scoring of defendant's sentencing guidelines and clarified with the trial court why he thought the scoring was inaccurate. The fact that the trial court subsequently disagreed with trial counsel and sentenced defendant according to the recommendation in the presentence report does not constitute ineffective assistance of counsel.

Further, while defendant argues trial counsel could have presented mitigating factors such as defendant's work as a writer, arranger of music, and singer to the sentencing court, there is nothing in the record to indicate that presenting this to the sentencing court would have influenced the sentencing court's decision. Indeed, defendant appears to acknowledge this in his brief on appeal by stating:

The Appellant submits that it is virtually impossible to demonstrate that his sentence would have been different if Counsel had argued upon his behalf. However, he believes there are several circumstances and / or mitigating factors that Counsel should have brought to the Court's attention.

Because defense counsel objected to scoring issues during sentencing and because defendant has not shown a reasonable probability that, if not for trial counsel's alleged errors, "the result would have been different and the result that did occur was fundamentally unfair or unreliable" (*Odom, supra* at 415), defendant has not established a claim of ineffective assistance of counsel.

Next, defendant argues that the prosecutor vouched for the credibility of witnesses and made several improper arguments during his closing argument and that trial counsel was ineffective for failing to object to the above. We disagree.

Defendant provides lengthy quotes of the prosecutor's closing arguments from the trial transcript with minimal analysis of what was improper about the statements. We have reviewed each statement carefully and find no prosecutorial misconduct.

As a general rule, "[a] prosecutor may not vouch for the credibility of witnesses by claiming some special knowledge with respect to their truthfulness." *People v McGhee*, 268 Mich App 600, 630; 709 NW2d 595 (2005) (citation omitted). However, prosecutors have "great latitude" regarding their arguments and conduct during a trial. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (citations omitted). Further, a prosecutor may argue points based on the evidence from the trial and draw reasonable inferences arising from the testimony during closing argument. *People v Kelly*, 231 Mich App 627, 641; 588 NW2d 480 (1998), citing *Bahoda, supra* at 282.

We believe that the prosecutor's statements were proper argument in reference to evidence in the record and did not constitute prosecutorial misconduct. As a result, it would have been futile for defendant's counsel to object to the statements. Because "[c]ounsel is not ineffective for failing to make a futile objection," defendant was not denied the effective assistance of counsel. *People v Chambers*, 277 Mich App 1, 11; 742 NW2d 610 (2007).

Affirmed.

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