

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY JEROME EDWARDS,

Defendant-Appellant.

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UNPUBLISHED

January 5, 2010

No. 287944

Wayne Circuit Court

LC No. 08-005590-FH

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendant appeals by right his bench-trial convictions of felon in possession of a firearm (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to two years in prison for the felony-firearm conviction, and two years' probation for the felon-in-possession conviction. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

The prosecuting attorney presented evidence that police officers executed a search warrant at a residence on Greenview Street in Detroit, and there found defendant in the dining room. In a bedroom the police found two firearms, a scale, two knotted plastic bags of suspected marijuana, and several pieces of mail addressed to defendant at the Greenview Street address.

Defendant's mother and brother both lived at the house. Defendant testified that he actually lived elsewhere, but had been sleeping at the Greenview residence because of marital difficulties. Defendant testified that his mother slept in the room where the guns were found, but that he did not know if the guns belonged to her. In contrast, a police officer testified that, when the warrant was executed, defendant stated that he lived at the Greenview address and made no mention of any other residence.

In finding defendant guilty, the trial court credited the police officer's testimony and noted that the mail addressed to defendant at the Greenview address included recent and important tax and medical documents. The court further noted that possession could be actual or constructive, sole or joint.

Defendant, through substitute counsel, filed a posttrial motion for an evidentiary hearing to develop a claim of ineffective assistance of trial counsel. See *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973). The matter was heard and decided at sentencing. Defendant

argued that trial counsel was ineffective for failing to call as witnesses his wife and mother, who would have testified that he was only happenstantially present at the Greenview Street residence at the time in question and bore no responsibility for anything found in the home. The trial court declined to proceed with an evidentiary hearing, noting that defendant claimed only that trial counsel should have called his wife and mother to testify, and explaining as follows:

The Court certainly can make some assumptions that their testimony as a mother and wife [would] corroborate [defendant's] position. That's no great secret. But the Court is well aware and has great recollection of the other overwhelming evidence presented as to guilt, and the Court has confidence in its decision . . . .

A trial court's decision whether to hold an evidentiary hearing is reviewed for an abuse of discretion. See *People v Mischley*, 164 Mich App 478, 482; 417 NW2d 537 (1987). An abuse of discretion occurs when the trial court chooses an outcome falling outside a "principled range of outcomes." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Defendant twice asked this Court to remand for a *Ginther* hearing. This Court first denied the motion but expressed a willingness to consider another such motion if it was "supported by affidavits of the proposed witnesses to show the testimony they could have given and show that defense counsel knew or should have known of their ability to so testify," along with "a more complete statement of the trial testimony and evidence to support the assertion that it is reasonably likely that the proffered testimony and evidence would have changed the outcome of the trial . . . ." Defendant responded as advised, providing offers of proof that his wife, mother, and now brother would all testify favorably. This Court nonetheless again denied the motion.

Now, having given the matter plenary consideration in this claim of appeal, we remain unpersuaded that a remand is in order. To prove ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that the representation so prejudiced the defendant as to result in deprivation of a fair trial. *Strickland v Washington*, 466 US 668, 687-688, 690; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). The defendant must further show that the result of the proceeding was fundamentally unfair or unreliable, and that but for counsel's poor performance the result would have been different. *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997). The defendant must overcome a strong presumption that counsel employed sound trial strategy. *People v Henry*, 239 Mich App 140, 146; 607 NW2d 767 (1999).

In this case, we are mindful that the trial court sat as the trier of fact and expressed great confidence in its verdict, characterizing the evidence against defendant as "overwhelming." The court, quite reasonably, deemed it predictable that defendant's family members would support defendant's account.

We note that defendant offered to present his wife and mother when initially moving for a *Ginther* hearing, and now adds his brother to the list of relatives who would have offered favorable testimony. Defendant does not explain why he did not offer his brother's testimony earlier. However, given how readily the trial court was prepared to hear, and likely discredit,

favorable testimony from two relatives, it seems unlikely that testimony from a third relative would make any difference.

Because defendant has failed to show that any testimony from the three proposed additional witnesses would have changed the result below, we conclude that he has failed to put forward a sufficiently plausible claim of ineffective assistance of counsel. See *Messenger, supra* at 181. Accordingly, we conclude that no evidentiary hearing was warranted and that the trial court did not abuse its discretion by declining to hold one.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Brian K. Zahra