

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN DOUGLAS JONES, JR.,

Defendant-Appellant.

UNPUBLISHED

February 2, 2010

No. 287910

Muskegon Circuit Court

LC No. 07-055773-FH

Before: Stephens, P.J., and Gleicher and M.J. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of uttering and publishing, MCL 750.249. Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to 46 months to 40 years' imprisonment. We affirm.

At trial, the prosecutor introduced evidence of an incident involving defendant's 2001 attempt to cash a \$500 check. The prosecution argued it was to show that defendant acted according to a common plan or scheme in the instant case. The trial court admitted the evidence without objection from defense counsel. On appeal, defendant argues that he was denied his constitutional right to the effective assistance of counsel when counsel failed to object to the other-acts evidence.

Defendant failed to preserve his claim of ineffective assistance of counsel for review by moving for a new trial or *Ginther*¹ hearing on the same basis. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). Therefore, this Court's review is limited to errors apparent on the record. *Id.* Whether defendant was denied his right to the effective assistance of counsel generally presents a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). A trial court's findings of fact, if any, are reviewed for clear error and issues of constitutional law are reviewed de novo by this Court. *Id.*

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

In order to demonstrate that he was denied the effective assistance of counsel under either the federal or state constitutions, a defendant must first show that trial counsel's performance was "deficient," and second, a defendant must show that the "deficient performance prejudiced the defense." *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). Whether defense counsel's performance was deficient is measured against an objective standard of reasonableness. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). "To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *Carbin*, *supra* at 600.

We conclude that defense counsel's failure to object to the other-acts evidence was deficient on an objective standard of reasonableness, *Toma*, *supra*. Here, evidence of the uncharged act was not admissible pursuant to MRE 404(b) to show defendant acted according to a common plan or scheme because it did not show, "such a concurrence of common features that the various acts are naturally to be explained as caused by a general plan of which they are the individual manifestations." *People v Sabin (After Remand)*, 463 Mich 43, 63; 614 NW2d 888 (2000), quoting Wigmore, Evidence (Chadbourn rev), § 304, p 249. However, defendant is not entitled to relief because he has failed to show that but for counsel's failure to object to the evidence, "the result of the proceedings would have been different." *Carbin*, 463 Mich at 600.

In this case, the prosecutor introduced a substantial amount of other evidence that implicated defendant in the charged offense. Jennifer Harper of Forge Industrial Staffing testified that she gave defendant a payroll check for approximately \$15 that was ultimately forged; she explained that defendant signed for the check, and that she wrote down defendant's state identification number before releasing the check to him. Richard Beckhorn testified that he encountered defendant that same day and defendant was anxious to cash a check. One of the people at Beckhorn's residence informed defendant that he could cash his check at the West Side Inn, a local tavern. Karen Greene went to the tavern with defendant and stated that defendant cashed a check there. Sharon Prohaska testified she was working at West Side Inn on the day of the incident. She testified that she gave defendant over \$900 after defendant endorsed the check and gave her his state identification number. Prohaska testified that she had "no doubt" that defendant cashed the check at issue on that day. In addition, the tavern's security camera captured the transaction and showed a man with tattoos on his arms cashing the check; at trial, defendant stipulated that he has tattoos on his arms. Harper testified that the altered check was the same \$15 one she gave to defendant, and she indicated the amount had been forged. The responding police officer and tavern owner observed the check and they also testified that the check was altered. Another witness testified that the endorsement on the check matched defendant's signature. Finally, the trial court instructed the jury not to consider the challenged other-acts evidence for purposes of propensity. On this record, we conclude defendant was not denied the effective assistance of counsel.

In a Standard 4 brief, defendant raises numerous issues in nine separate questions presented. However, defendant fails to articulate any coherent legal argument related to those issues and instead randomly cites general legal principals without citing to the record in the instant case or providing any analysis or proper citation. Defendant's failure to discuss, explain or rationalize his arguments constitutes abandonment of the issues. *People v Anderson*, 209 Mich App 527, 538; 531 NW2d 780 (1995); see also *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998) (an appellant may not merely announce a position and leave it to this

Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment to an issue with little or no citation of supporting authority). In addition, we note that defendant's argument regarding the inadmissibility of other-acts evidence is abandoned because it was not properly set forth in defendant's statement of the question presented. MCR 7.212(C)(5); *People v Albers*, 258 Mich App 578, 584; 672 NW2d 336 (2003). However, upon consideration, defendant's evidentiary argument has no merit as an unpreserved evidentiary issue. Defendant cannot show that any error in regard to the other-acts evidence amounted to plain error affecting his substantial rights, because the error did not affect the outcome of the proceedings. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Elizabeth L. Gleicher

/s/ Michael J. Kelly