

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
June 12, 2012

v

EDWARD ALLEN YOUNG,

Defendant-Appellant.

No. 301721
Saginaw Circuit Court
LC No. 10-033792-FH

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Edward Allen Young appeals as of right his jury trial conviction of filing a false report of a felony,¹ failure to stop at the scene of a property damage accident,² operating a motor vehicle while his license was suspended or revoked,³ and operating a motor vehicle without security.⁴ Young was sentenced as a fourth habitual offender to concurrent terms of 48 months to 15 years' imprisonment for filing a false report, 90 days for failing to stop at the scene of a property damage accident, and one year each for operating a motor vehicle while his license was suspended or revoked, and operating a motor vehicle without security. We affirm.

On appeal, Young argues that he received ineffective assistance of counsel. Specifically, Young asserts that his trial counsel impermissibly failed to convey a plea offer made during trial, and did not inform him of his habitual offender status or the effect that it would have on his sentence. We disagree. Young preserved the issue below in a motion for a new trial.

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. This Court reviews a trial

¹ MCL 750.411a(1)(b).

² MCL 257.618.

³ MCL 257.904.

⁴ MCL 500.3102.

court's factual findings for clear error and reviews de novo questions of constitutional law.⁵

The United States and Michigan Constitutions both guarantee a defendant the right to effective assistance of counsel.⁶ To demonstrate ineffective assistance Young must show that (1) "counsel's performance was deficient" and (2) "the deficient performance prejudiced the defense."⁷ Counsel's performance is deficient if "it fell below an objective standard of reasonableness under the prevailing professional norms."⁸ Failure to convey an authorized plea offer can constitute ineffective assistance of counsel if prejudice is shown.⁹ "An ineffective assistance of counsel claim may [also] be based on counsel's failure to properly inform the defendant of the consequences of accepting or rejecting a plea offer."¹⁰ "Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim."¹¹

At the hearing on Young's motion for a new trial, defense counsel testified that he conveyed the plea offer to Young, which Young rejected. While Young testified to the contrary, a police officer corroborated defense counsel's version of events regarding the plea offer. The officer testified that he heard the prosecutor make the plea offer and then saw defense counsel leave the courtroom to speak with Young. The officer explained that counsel was gone for a period of time, and when counsel returned, counsel indicated that Young had rejected the offer.

Additionally, Young contends that he did not learn of his habitual offender status until after trial and that defense counsel never discussed the possible maximum sentence with him. Young, however, admitted at the hearing on his motion for a new trial that he acknowledged understanding of his habitual offender status on the record before trial in proceedings related to a plea offer. Additionally, defense counsel testified that although he could not recall when the conversations occurred, he advised Young of his habitual offender status and the resulting possible maximum penalty of 15 years.

The trial court found that defense counsel's recitation of the facts was more credible. "This Court will not interfere with the [trial court's] role of determining the weight of the

⁵ *People v Dendel*, 481 Mich 114, 124; 748 NW2d 859 (2008), amended on other grounds 481 Mich 1201 (2008) (citations and internal quotation marks omitted).

⁶ US Const, Am VI; Const 1963, art 1, § 20.

⁷ *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

⁸ *People v Riley*, 468 Mich 135, 140; 659 NW2d 611 (2003).

⁹ *People v Williams*, 171 Mich App 234, 241; 429 NW2d 649 (1988).

¹⁰ *People v Douglas*, __ Mich App __; __ NW2d __ (2012), slip op at 10 (citation omitted).

¹¹ *Carbin*, 463 Mich at 600.

evidence or the credibility of witnesses.”¹² Accordingly, Young has failed to establish that defense counsel was ineffective.¹³

Affirmed.

/s/ Stephen L. Borrello
/s/ Peter D. O’Connell
/s/ Michael J. Talbot

¹² *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005).

¹³ *Carbin*, 463 Mich at 600; *Riley*, 468 Mich at 140.