

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDREW JOSEPH EVERETT,

Defendant-Appellant.

UNPUBLISHED

June 21, 2012

No. 302802

Kalkaska Circuit Court

LC No. 10-003273-FH

Before: M.J. KELLY, P.J., and WILDER and SHAPIRO, JJ.

MEMORANDUM.

Defendant was convicted after a jury trial of three counts of first degree criminal sexual conduct, in violation of MCL 750.520b(1)(b). Defendant appeals his convictions as of right. He was sentenced as a habitual offender, second offense, to 18 to 40 years in prison. MCL 769.10. We affirm.

Defendant first argues that the trial court erred reversibly in precluding impeachment of the complainant concerning her juvenile adjudications to show her character for truthfulness. We disagree. Evidentiary rulings are reviewed for an abuse of discretion. *People v Meshell*, 265 Mich App 616, 636; 696 NW2d 754 (2005). A court abuses its discretion where its decision falls outside a range of reasonable or principled outcomes. *People v Kahley*, 277 Mich App 182, 184; 744 NW2d 194 (2007).

Here, the trial court considered on the record most of the relevant factors in MRE 608(b) and MRE 609(a), (b), and (e). While some of the discussion was held off the record, the court was aware of its discretion and the factors to apply. *Meshell*, 265 Mich App at 638; *People v McDaniel*, 256 Mich App 165, 168; 662 NW2d 101 (2003). Impeachment with misdemeanor convictions is generally disfavored, MRE 609(a), as is evidence of juvenile adjudications. MRE 609(e). Theft crimes may be used for impeachment only if they involve dishonesty or false statement. *People v Parcha*, 227 Mich App 236, 242-243; 575 NW2d 316 (1997). Under MRE 609(e), if a juvenile adjudication would be admissible to attack the credibility of an adult, it may be used if the court finds admission necessary for a fair determination of the case. However, simple larceny is minimally probative of credibility. *Meshell*, 265 Mich App at 635. From the context of the discussions and the attorneys' and court's statements, we find the court was aware of these principles and did not abuse its discretion in applying them.

Defendant also contends that he was denied the effective assistance of counsel by his attorney's failure to specifically argue certain points in seeking to impeach the complainant. MRE 609(e). This alleged error was not preserved and thus our review is limited to facts apparent from the record. *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000). Here, defendant has not shown that counsel's performance was defective and deprived defendant of a fair trial. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Lloyd*, 459 Mich 433, 446; 590 NW2d 738 (1999). To show prejudice, the appellant must show that, but for counsel's error, there is a reasonable likelihood that the result would have been different. *People v Shively*, 230 Mich App 626, 628; 584 NW2d 740 (1998). No such showing has been made here.

Affirmed.

/s/ Michael J. Kelly
/s/ Kurtis T. Wilder
/s/ Douglas B. Shapiro