

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 16, 2012

v

WILLIAM JESSIE BROWN,

Defendant-Appellant.

No. 306201
Berrien Circuit Court
LC No. 2011-000777-FC

Before: SAAD, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Defendant William Jessie Brown appeals by right his jury convictions of first-degree criminal sexual conduct, MCL 750.520b, assault with a dangerous weapon, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced Brown as a habitual offender, fourth offense, MCL 769.12, to serve concurrent prison sentences of 18 to 60 years for the criminal sexual conduct conviction and 4 to 15 years for the felonious assault conviction, which he must serve consecutive to a two-year sentence for the felony-firearm conviction. Because we conclude that there were no errors warranting relief, we affirm.

I. SUFFICIENCY OF THE EVIDENCE

Brown first argues that the prosecutor presented insufficient evidence to support his convictions. Specifically, Brown contends that the victim was not credible. In reviewing a challenge to the sufficiency of the evidence, this Court reviews the record “de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009). However, the credibility of witnesses and the weight accorded to evidence are questions for the jury. *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009). The jury accepted the victim’s version of events, which it was free to do. *Roper*, 286 Mich App at 88-89. And the victim’s testimony that Brown sexually assaulted her and that he pointed a firearm during the course of the assault was sufficient to establish the elements of each offense.

II. WITNESS LIST

Brown next argues that the trial court violated his due process rights when it allowed the prosecutor to add the victim's mother to the witness list on the first day of trial. We review a trial court's decision to allow the late endorsement of a witness for an abuse of discretion. *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Id.*

A prosecutor must provide a defendant with a witness list at least 30 days before trial. MCL 767.40a(3). However, the prosecutor may "at any time" add a person to the witness list "upon leave of the court and for good cause shown or by stipulation of the parties." MCL 767.40a(4). Good cause means a satisfactory, sound, or valid reason. *People v Buie*, 491 Mich 294, 319; 817 NW2d 33 (2012).

The record shows that the prosecutor asked for additional investigation into persons who might be able to corroborate that the victim was injured. After an inadvertent—perhaps negligent—delay of several months, the investigation established that the victim's mother could corroborate the victim's injuries. For that reason, the prosecutor requested permission to add her to the witness list, which request the trial court granted.

Brown claims that the trial court's decision to permit the addition of the victim's mother to the witness list prejudiced him because she was completely unknown to the defense and, absent her testimony, the victim had no corroboration for her claim that she suffered injuries. It is generally improper for a trial court to resort to the extreme sanction of precluding a witness from testifying when the trial court is able to ensure fairness through alternate means. See *Yost*, 278 Mich App at 386. And a prosecutor's negligence is not normally the type of egregious mistake that would warrant such an extreme sanction. *People v Callon*, 256 Mich App 312, 328; 662 NW2d 501 (2003).

Here, the prosecutor disclosed the witness' proposed testimony and the trial court instructed that the witness was to remain at the courthouse so that Brown's lawyer could interview her. Brown's lawyer, however, chose not to interview her—apparently because he was satisfied with the information provided by the prosecutor. In addition, there is no claim that Brown's lawyer would have proceeded any differently at trial had he known more about the victim's mother's testimony. Under these circumstances, we cannot conclude that the trial court's decision to permit the addition of this witness fell outside the range of principled outcomes. The trial court gave Brown's lawyer an opportunity to interview the witness and Brown has not identified how a different procedure short of exclusion might have benefited him. *Yost*, 278 Mich App at 379.¹

¹ Brown also claims that his lawyer was ineffective for failing to request an adjournment to investigate the witness. But Brown has not identified anything that might have been discovered by such an investigation and used to impeach her testimony. As such, even if we were to conclude that his lawyer's decision fell below an objective standard of reasonableness, Brown

III. FELONIOUS ASSAULT INSTRUCTION

Brown next argues that the trial court erred when it instructed the jury that the prosecutor had to prove beyond a reasonable doubt that Brown committed the felonious assault with a shotgun or hatchet. He contends that the trial court's instruction was erroneous because he had no notice that the prosecutor might establish this offense with evidence that he possessed a hatchet because he was charged with assaulting the victim with a shotgun. Brown's lawyer did not object to the instruction; for that reason, we must review it for plain error. *People v Aldrich*, 246 Mich App 101, 124-125; 631 NW2d 67 (2001).

Brown's assertion that he had no pretrial notice of the hatchet is belied by the record. At the preliminary examination, the victim testified that Brown held a gun in one hand and a "hatchet or something" in his other hand. A trial court may amend the information at any time before, during, or after trial unless the proposed amendment would unfairly surprise or prejudice the defendant. MCL 767.76; MCR 6.112(H). Given that Brown had notice that the victim had testified about a hatchet at the preliminary examination and would likely testify to that effect again at trial, and because the trial court's instruction reflected the evidence as it actually developed at trial, we cannot conclude that the decision to instruct the jury in this way amounted to plain error. See MCR 6.112(G) (stating that a trial court may not dismiss an information or reverse a conviction because of a "variance between the information and proof regarding time, place, the manner in which the offense was committed, or other factual detail relating to the alleged offense.").

IV. INEFFECTIVE ASSISTANCE OF COUNSEL

Brown next asserts that his trial lawyer was ineffective and that the trial court erred by denying his request for an evidentiary hearing. In order to establish a claim of ineffective assistance of counsel, the defendant must show that his trial lawyer's acts or omissions fell below an objective standard of reasonableness and that there is a reasonable probability that, but for those errors, the result of the proceeding would have been different. *People v Gioglio (On Remand)*, 296 Mich App 12, 22; 815 NW2d 589 (2012). This Court reviews de novo whether a defendant's lawyer's acts or omissions fell below an objective standard of reasonableness under prevailing professional norms and prejudiced the defendant. *Id.* at 19-20.

A trial court should grant a defendant's request for an evidentiary hearing if the defendant establishes that his ineffective assistance claim depends on facts not in the record. See *People v Ginther*, 390 Mich 436, 443, 445; 212 NW2d 436 (1973) (noting that defendant's must make a testimonial record at the trial court level when relying on facts not of record to establish ineffective assistance and concluding that the defendant's motion for a hearing should have been granted because he showed the need for an evidentiary hearing). Here, Brown's only offer of proof was the police report. He provided the police report to establish that certain witnesses could have testified as to certain matters. He did not, however, make an offer of proof regarding

has not established that there is any probability—let alone a reasonable probability—that the result would have been different had his lawyer gotten an adjournment. *People v Uphaus (On Remand)*, 278 Mich App 174, 185; 748 NW2d 899 (2008).

the facts that would be established at an evidentiary hearing regarding his ineffective assistance claims that were unrelated to the police report. In addition, the trial court accepted as true the statements of the witnesses that were contained in the police report. Accordingly, because Brown did not establish the need for an evidentiary hearing, the trial court did not abuse its discretion when it denied his request. *Id.*

Brown argues that his lawyer was ineffective for failing to “do a background check of witnesses and their history with specific reference to [the victim.]” However, Brown did not establish what this background check would have revealed and how his lawyer might have used that information to his benefit. As such, he failed to establish that, but for counsel’s alleged deficient performance, there is a reasonable probability that the result of the trial would have been different. *Gioglio*, 296 Mich App at 22.

He next claims that counsel was ineffective because he failed to take steps to locate Brown’s answering machine, which had messages on it from the victim from both before and after the incident. According to Brown, the fact that the victim called him after the incident would tend to show that the sexual encounter was consensual. However, the victim admitted that she called Brown after the event at issue. Thus, as the trial court stated, that issue “was before the jury.” Moreover, Brown has not established how the actual recordings or testimony by others about the recordings might have altered the outcome.² Accordingly, he has not established this claim of error. *Id.*

Brown also claims that his lawyer was ineffective for failing to call numerous witnesses that were named in the police report. Brown faults his trial lawyer for failing to call the victim’s brother and Cathy Jones, both of whom he states could have impeached the victim. Specifically, Brown contends that both witnesses could have testified that they did not see marks or injuries on the victim when she told them that she had been raped. However, the victim’s brother recalled that the victim was “very upset” and “broke down crying” when she told him and Jones remembered that the victim was crying when she recounted the rape. Thus, the testimony also had the potential to support the victim’s version of events and render her account more credible. The decision whether to call a witness is generally a matter of trial strategy. *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003). And Brown’s lawyer might have elected to forego these witnesses because their testimony might have bolstered the victim’s credibility. Accordingly, we cannot conclude that Brown’s lawyer’s decision not to call these witnesses fell below an objective standard of reasonableness. See *Gioglio*, 296 Mich App at 22-23 (stating that “a reviewing court must conclude that the act or omission of the defendant’s trial counsel fell within the range of reasonable professional conduct if, after affirmatively entertaining the range of possible reasons for the act or omission under the facts known to the reviewing court, there might have been a legitimate strategic reason for the act or omission.”).

Brown also argues that his trial lawyer should have called Sheila Hill, who stated that the victim was “always crying.” Brown asserts that Hill’s testimony would have shown that the

² Brown claimed that Henry Fritrail, his nephew, and Raymond Whitfield could have testified about the messages left by the victim on his answering machine.

victim's demeanor when reporting the rape was typical. However, the fact that the victim might cry easily is not impeachment evidence and Hill's statement did not suggest that the victim cried for false reasons. As such, Brown's lawyer might have reasonably concluded that her testimony would not be helpful. *Id.*

Brown maintains that his trial lawyer was deficient too because he failed to call his neighbors, Mark and Keena McAfee, to testify that they did not recall anyone knocking on their front door at night during the relevant time period. This, Brown believes, would show that the victim lied when she said she tried to get help at a neighboring house after the assault. However, the proposed testimony was consistent with the victim's testimony that no one answered and could just as easily have suggested that the McAfees did not hear the victim rather than that she lied about seeking help. Moreover, Mark McAfee stated that he "doesn't remember anything back that far" and that he would not dispute that a woman actually beat and kicked at his door. Given the limited and equivocal value of this testimony, Brown's trial lawyer may have determined that it would not be useful to call these witnesses. As such, Brown has not established that the decision not to call these witnesses fell below an objective standard of reasonableness. *Id.*

Brown next argues that counsel was ineffective for failing to question him about his sexual history with the victim. According to Brown, he wanted to argue that, although he did not engage in sexual penetration with the victim on the day at issue, had he wanted to, he would not have needed to use force because she had previously engaged in consensual intercourse with him. A defendant may present inconsistent defenses. *People v Lemons*, 454 Mich 234, 245; 562 NW2d 447 (1997). However, counsel's decision not to present a defense that was inconsistent with his theory is a matter of trial strategy that we will not second-guess. See *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999).

Brown claims that his lawyer was ineffective for failing to object to the admission of photographs of his house. According to Brown, the photographs were prejudicial because they gave the jury "a very wrong impression" about him; specifically, he notes that the photographs were taken after someone broke in and messed up the house. Relevant evidence is generally admissible. MRE 402. The photographs, as stated by the trial court, were "clearly relevant." They showed the layout of the part of the house where the offenses allegedly occurred, allowing the jury to have a better understanding of the victim's testimony. See MRE 401. Nevertheless, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. MRE 403. The victim and Brown both testified that the photograph of the living room did not, in all aspects, accurately depict the house as it was in July 2010. Moreover, the fact that the home was messy is not the kind of prejudicial content that might warrant exclusion; it is doubtful that the jury would convict Brown of the charged offenses solely because they thought he was a poor housekeeper. See *People v Blackston*, 481 Mich 451, 462; 751 NW2d 408 (2008) ("Unfair prejudice may exist where there is a danger that the evidence will be given undue or preemptive weight by the jury or where it would be inequitable to allow use of the evidence."). Accordingly, any objection to the admission of the photographs on that basis would have been futile and Brown's lawyer was not ineffective for failing to make a futile objection. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).

Finally, Brown argues that counsel was ineffective for failing to object to the admission of the gun, which he claims was unlawfully seized from his house. Searches and seizures conducted without a warrant are unreasonable per se, subject to several exceptions, including a search conducted pursuant to consent. *People v Brown*, 279 Mich App 116, 131; 755 NW2d 664 (2008). Here, police testimony established that the gun at issue was seized after Brown gave his consent to search. Hence, any objection to the admission of the gun on that basis would have been futile. See *Fike*, 228 Mich App at 182.

V. SENTENCING

Brown contends that he is entitled to be resentenced because the trial court erred in scoring several offense variables (OVs). This Court reviews de novo the proper interpretation and application of the sentencing guidelines. *People v Bemmer*, 286 Mich App 26, 31; 777 NW2d 464 (2009). This Court reviews the findings underlying a trial court's scoring decision for clear error. *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008).

Brown first claims that the trial court erred in scoring the variables because it relied on facts that were not found beyond a reasonable doubt by a jury, contrary to *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). However, our Supreme Court has held that *Blakely* does not apply to Michigan's sentencing scheme. *People v Drohan*, 475 Mich 140, 164; 715 NW2d 778 (2006). Therefore, this claim is without merit.

Next, Brown claims that the trial court erred in scoring 15 points under OV 1, MCL 777.31, and five points under OV 2, MCL 777.32, for the criminal sexual conduct offense because the prosecutor charged him with multiple offenses and he only used a firearm to commit the felonious assault. Fifteen points must be scored under OV 1 when “[a] firearm was pointed at or toward a victim or the victim had a reasonable apprehension of an immediate battery when threatened with a knife or other cutting or stabbing weapon.” MCL 777.31(1)(c). Five points must be scored for OV 2 when “[t]he offender possessed or used a pistol, rifle, shotgun, or knife or other cutting or stabbing weapon.” MCL 777.32(1)(c).

Brown's argument is premised on our Supreme Court's holding in *People v McGraw*, 484 Mich 120, 135; 771 NW2d 655 (2009), that “[o]ffense variables are properly scored by reference only to the sentencing offense except when the language of a particular offense variable statute specifically provides otherwise.” Nothing in *McGraw*, however, supports Brown's claim that OVs 1 and 2 cannot be scored for the criminal sexual conduct offense merely because he also used the gun to commit a felonious assault. The pertinent question is whether Brown, in the course of committing first-degree criminal sexual conduct, possessed or used a pistol, rifle, or shotgun and pointed the gun at the victim.

The victim testified that Brown appeared in the bathroom doorway with a gun in his right hand and commanded: “Bitch, pull your pants down.” Brown later pointed the gun at the victim's face after she tried to escape. He told her that she “gone [sic] do it . . . you giving me some, bitch.” He also had the gun in his hand when he stood over her with his pants down. Given this evidence, we cannot conclude that the trial court's finding that Brown used the gun during the course of committing first-degree criminal sexual conduct was clearly erroneous. *Osantowski*, 481 Mich at 111. Indeed, that finding was entirely appropriate.

Brown argues that the trial court erred in scoring ten points under OV 4, MCL 777.34, because there was no evidence that the victim suffered serious psychological injury. Ten points must be scored for OV 4 if “[s]erious psychological injury requiring professional treatment occurred to a victim.” MCL 777.34(1)(a). The victim testified that, after the offenses, she has been unable to lead a normal life. She no longer knows who to trust. She stays at home and only goes to church; she “[v]ery seldom” goes for walks. The victim further testified that she has been seeing a counselor. She cries a lot because she is “hurting so bad.” The victim’s testimony was adequate evidence that the victim suffered serious psychological injury. See, e.g., *People v Ericksen*, 288 Mich App 192, 202-203; 793 NW2d 120 (2010). Accordingly, the trial court did not clearly err in finding that the victim suffered a serious psychological injury.³ *Osantowski*, 481 Mich at 111.

Brown argues that the trial court erred in scoring ten points under OV 19, MCL 777.49. Ten points must be scored for OV 19 if “[t]he offender otherwise interfered with or attempted to interfere with the administration of justice.” MCL 777.49(c). Here, an officer testified that, after speaking with the victim, he went to Brown’s house and Brown, on two separate occasions, told him that William Brown was not at the house. According to Brown, his lies were unrelated to the commission of the criminal sexual conduct and felonious assault offenses and, therefore, cannot be considered under *McGraw*. However, our Supreme Court has stated that OV 19 may be scored for conduct that occurs after the sentencing offense is complete. *People v Smith*, 488 Mich 193, 202; 793 NW2d 666 (2010). Brown also claims that the lies cannot support a score under OV 19. But the act of providing a false name to police officers constitutes interference with the administration of justice. *People v Barbee*, 470 Mich 283, 287-288; 681 NW2d 348 (2004). Because the evidence showed that Brown lied to the officer about his identity while the officer was investigating the offenses, we cannot conclude that the trial court clearly erred when it found that Brown interfered with the administration of justice. *Osantowski*, 481 Mich at 111.

Brown further argues that, even if OV 19 could be scored, OV 19 is void for vagueness. “When a defendant’s vagueness challenge does not implicate First Amendment freedoms, the constitutionality of the statute in question must be examined in light of the particular facts at hand without concern for the hypothetical rights of others.” *People v Vronko*, 228 Mich App 649, 652; 579 NW2d 138 (1998). “The proper inquiry is not whether the statute may be susceptible to impermissible interpretations, but whether the statute is vague as applied to the conduct allegedly proscribed in this case.” *Id.* In making a vagueness determination, the Court must consider judicial interpretations of the statute. *Id.* at 653. Here, our Supreme Court has

³ We reject Brown’s argument that the “rule of lenity” requires a score of zero for OV 4 or any other offense variable. “The ‘rule of lenity’ provides that courts should mitigate punishment when the punishment in a criminal statute is unclear.” *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997). It only applies when the statute’s language is ambiguous or in the absence of any firm indication of legislative intent. *Id.* at 700 n 12. Brown makes no argument that the language of OV 4 or any other offense variable is ambiguous. Once the trial court found that the victim had suffered the requisite psychological injury, it had to score this variable as provided by the Legislature. See *Bemer*, 286 Mich App at 32.

held that lying to a police officer about one's identity is assessable under OV 19. See *Barbee* 470 Mich at 287-288. Because the language of OV 19 is not vague as applied to Brown's conduct, we reject his argument.

There were no sentencing errors.

V. DEFENDANT'S STANDARD 4 BRIEF

In a brief submitted under Standard 4, Brown argues that he should not have been bound over for trial because the victim testified inconsistently with the police report and, therefore, must have offered perjured testimony at the preliminary examination. He also argues that the prosecutor committed misconduct when he allowed the victim to commit perjury. However, the record does not support that the victim committed perjury at the preliminary examination. Moreover, Brown has not provided us with any legal authority for the proposition that a prosecutor must disbelieve his own witness when the witness testifies to facts that are not in the police report. Therefore, he has abandoned this claim of error. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). In any event, "the presentation of sufficient evidence to convict at trial renders any erroneous bindover decision harmless." *People v Bennett*, 290 Mich App 465, 481; 802 NW2d 627 (2010).

Brown also argues that, because it was clear that he was confused about the proceedings, the district court erred when it failed to adjourn the preliminary examination and order that he undergo a competency evaluation. Because Brown never asserted that he was incompetent to stand trial, the issue is unpreserved, *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007), and we review unpreserved claim of error for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

A defendant is presumed to be competent to stand trial. MCL 330.2020(1); *People v Abraham*, 256 Mich App 265, 283; 662 NW2d 836 (2003). A defendant is incompetent "only if he is incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner." MCL 330.2020(1). Upon a showing that the defendant may be incompetent to stand trial, the court shall order the defendant to undergo an examination by personnel at the Center for Forensic Psychiatry or at another facility certified by the Department of Mental Health to perform competency examinations. MCL 330.2026(1); MCR 6.125(C)(1). Here, Brown expressed confusion when the district court asked him whether he wished to have the preliminary examination that morning. However, when the court rephrased the question, Brown understood and answered, "Yes." There is nothing in the exchange to suggest that Brown, because of his mental condition, was incapable of understanding the nature and object of the proceedings or of assisting in his defense. MCL 330.2020(1). Accordingly, the court did not commit plain error when it failed to sua sponte order Brown to undergo a competency examination. *Carines*, 460 Mich at 763.

Brown next argues that his due process rights were violated by the police department's failure to conduct a thorough investigation. The duty of the police to investigate a crime is not without limit. See *People v Miller*, 211 Mich App 30, 43; 535 NW2d 518 (1995). Brown cites no legal authority to support his argument that he was denied due process because the department failed to conduct a background check on the victim or failed to perform any other

investigatory act. He also fails to offer any facts to show that the investigation was deficient beyond arguing that he believes certain steps should have been taken. As such, we conclude that he has not sufficiently supported this claim of error. See *Kelly*, 231 Mich App at 640-641.

Brown claims that he did not receive a fair trial because of “contradictions in evidence and lack of evidence.” To the extent that we have not already addressed these vague claims of error, we reject them. Brown has not properly supported those positions with citation to the record or supporting authority. See *id.*

Finally, Brown argues that he was denied effective assistance of counsel.⁴ Brown claims that his lawyer was ineffective for (1) failing to challenge the victim’s perjured testimony, (2) failing to challenge the prosecutor’s conduct in soliciting perjured testimony, (3) failing to challenge the actions of the police department, and (4) failing to challenge the existence of certain evidence. However, Brown has failed to identify the legal basis on which counsel should have made these challenges and, therefore, has failed to establish that his counsel’s conduct in failing to make them fell below an objective standard of reasonableness. *Gioglio*, 296 Mich App at 19-20.⁵ Brown also claims that his counsel was ineffective for failing to file certain pretrial motions. Again, he has not identified the legal basis for the motions. Accordingly, Brown has not shown that the failure to file the motions fell below objective standards of reasonableness. *Id.*

Brown claims that counsel was ineffective for failing to do investigations, including investigating the possibility of two different police reports, the time frame in which an officer was laid off, and the possibility of getting the gun checked for fingerprints. Failure to make a reasonable investigation can constitute ineffective assistance of counsel. *People v McGhee*, 268 Mich App 600, 626; 709 NW2d 595 (2005). However, even assuming that defense counsel did not conduct the investigations requested of him, Brown has not shown what additional facts would have been revealed through further investigation. Accordingly, he has not shown that, but for counsel’s alleged deficient performance, there is a reasonable probability that the result of his trial would have been different. *Gioglio*, 296 Mich App at 19-20.

Brown asserts that his counsel was ineffective for failing to object to the admission of the photographs of his house. According to Brown, because the photographs were taken after someone broke into his house, the photographs were inadmissible under MRE 404(b) because they depicted another crime. However, MRE 404(b) is not relevant to the admission of the photographs. The photographs, even if they depicted a home invasion, were not evidence of a crime, wrong, or act committed by Brown. MRE 404(b)(1). Because defense counsel is not

⁴ Because they were not part of the lower court record, we will not consider Brown’s affidavit and the letters that he attached to his standard 4 brief. See *People v Seals*, 285 Mich App 1, 21; 776 NW2d 314 (2009).

⁵ Brown also reasserted his claim that his lawyer should have done a background check on the victim.

required to make a futile objection, *Fike*, 228 Mich App at 182, counsel was not ineffective for failing to object to the photographs under MRE 404(b).

Brown also raises numerous other claims of ineffective assistance of counsel in his standard 4 brief. He makes these claims without any reference to the record or to legal authority. Consequently, he has not established that counsel's performance fell below objective standards of reasonableness. *Gioglio*, 296 Mich App at 19-20.

We also deny his request for remand for an evidentiary hearing. In addition to the request not being properly before us, see MCR 7.211(C)(1), Brown has not shown that there is any plausible legal merit to the claims of ineffective assistance.

There were no errors warranting relief.

Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Michael J. Kelly