

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILL HENRY JOHNSON,

Defendant-Appellant.

UNPUBLISHED

November 22, 1996

No. 178110

LC No. 93-008204

Before: Saad, P.J., and Corrigan and R. A. Benson,* JJ.

PER CURIAM.

The trial judge convicted defendant of four counts of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and one count of felony firearm, MCL 750.227b; MSA 28.548.

I

Defendant argues that he is entitled to a new trial because his trial counsel was ineffective. To establish a denial of effective assistance of counsel, the defendant must prove that counsel's performance was below an objective standard of reasonableness under prevailing professional norms, and that the representation so prejudiced the defendant as to deprive him of a fair trial. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995). Effective assistance of counsel is presumed, and defendant bears a heavy burden of proving otherwise. *People v Stanaway*, 446 Mich 643 687; 521 NW2d 557 (1994). After thoroughly reviewing the trial transcript and the record of the *Ginther* hearing, we find that defendant did not overcome his burden.

II

Next, defendant contends that he was denied a speedy trial due to a delay of almost two months between the first and second day of testimony. To determine whether a defendant has been denied a speedy trial, this Court must balance the following factors: (1) the length of the delay; (2) the reasons for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) prejudice to

* Circuit judge, sitting on the Court of Appeals by assignment.

the defendant as a result of the delay. *People v Simpson*, 207 Mich App 560, 563; 526 NW2d 33 (1994).

Here, defendant was arrested on July 9, 1993, and trial started on March 24, 1994. After adjournment, the bench trial resumed on May 18, 1994, and the verdict was announced the same day. Because the delay was less than eighteen months, the burden is on defendant to establish prejudice. *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994). Defendant argues that he suffered anxiety while “awaiting trial and even more so waiting nearly two months for his trial to conclude.” By his own admission, however, defendant was only incarcerated for a total of twenty-five days prior to being convicted. Moreover, anxiety alone is insufficient to establish a violation of the right to a speedy trial. *People v Jackson*, 171 Mich App 191, 201; 429 NW2d 849 (1988).

Defendant also claims that he suffered prejudice because the two-month delay between the first and second days of trial may have caused the trial court to forget details of the case. We disagree. The trial judge took notes throughout the trial and had a good recollection of the case despite the delay. Moreover, in reaching his verdict, the judge provided a detailed and accurate recitation of the facts which included evidence during the first day of trial. Accordingly, defendant has failed to demonstrate prejudice due to the delay, and we find this issue to be without merit. *Simpson*, 207 Mich App at 564.

Affirmed.

/s/ Henry William Saad

/s/ Maura D. Corrigan

/s/ Robert A. Benson