

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALEX SAMUEL MCDOWELL,

Defendant-Appellant.

UNPUBLISHED

December 27, 1996

No. 184019

LC No. 94-000464

Before: Young, P.J., and O’Connell and Nykamp,* JJ.

PER CURIAM.

Defendant appeals as of right after being convicted by a jury for breaking and entering a building, MCL 750.110; MSA 28.305. Defendant was then charged and sentenced as a habitual offender-fourth, MCL 769.12; MSA 28.1084, to four to twenty years of imprisonment. We affirm.

Defendant argues that the trial court erred in denying his motion for new trial based on his claim of ineffective assistance of counsel. To prevail, defendant must establish that his counsel’s performance fell below an objective standard of reasonableness and the representation so prejudiced the defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). Defendant claims he was prejudiced by his trial counsel’s failure to discover impeachment evidence against the prosecution’s key witness. We disagree.

At the *Ginther*¹ hearing, defendant introduced evidence that the witness had pleaded guilty to a misdemeanor charge and had not been sentenced at the time of defendant’s trial. Defendant argued that his trial counsel could have used this information to show that the witness had a motive to testify against defendant in order to curry favor with the authorities before being sentenced. The trial court found that the evidence against this witness concerned a guilty plea in another county, and then reasoned that it was doubtful whether defendant’s trial counsel could have effectively impeached the witness as his testimony would not have been an attempt to curry favor with the Oscoda County authorities. We agree with the trial court that defendant failed to show actual prejudice resulted from his trial counsel’s failure to discover impeachment evidence. Accordingly, we hold that the lower court did not abuse its discretion

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

when denying defendant's motion for a new trial. *Pickens, supra*; see also *People v Davis*, 199 Mich App 502, 515; 503 NW2d 457 (1993).

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Peter D. O'Connell

/s/ Wesley J. Nykamp

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