

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES BRANCH,

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 186822

LC No. 94-013660

Before: Cavanagh, P.J., and Gage and D.A. Burrell,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.277, one count of breaking and entering an occupied dwelling, MCL 750.110; MSA 28.305, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to three to ten years' imprisonment for the assault with intent to do great bodily harm convictions, three to fifteen years' imprisonment for the breaking and entering conviction, and two years' imprisonment for the felony-firearm conviction. Defendant now appeals as of right.

I

Defendant first argues that his convictions were against the great weight of the evidence and that he is entitled to a new trial. We disagree.

A new trial may be granted where the verdict is against the great weight of the evidence or to prevent an injustice. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993). A verdict may be vacated and a new trial granted only when the verdict does not find reasonable support in the evidence, but is more likely attributable to causes outside the record such as passion, prejudice, sympathy, or other extraneous influences. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). A trial judge may grant a new trial if the judge disbelieves the testimony of witnesses for the prevailing party. *Herbert*, *supra* at 476. The standard for appellate review of a trial court's

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

decision regarding a motion for new trial is whether the judge committed an abuse of discretion. *Id.* at 477.

Defendant argues that the prosecution's identification evidence was incredible, exhibited inconsistencies, and was motivated by ill-will. The victims were members of defendant's former girlfriend's family. Defendant was involved in an altercation with the family the morning before the incident at issue. The mother and sister of defendant's former girlfriend testified that defendant returned early the next morning, broke into their home, entered through a window, fired a gun into a bedroom occupied by the sister, chased the mother out of the house, put a gun to the mother's head, fired twice, and missed.

Defendant contends that the shooter was someone else. He argues that the family's testimony was inherently incredible and implies that the prosecution witnesses misidentified him because they were upset that he broke off his relationship with his former girlfriend. Defendant offered an alibi witness who testified that defendant was with her at the time of the incident. Defendant argues that on these bases, the verdicts were against the great weight of the evidence. We reject defendant's arguments.

The testimony of the prosecution's witnesses was consistent and was corroborated by physical evidence. Furthermore, defendant's alibi witness, his current girlfriend, was not a disinterested witness and failed to come forward with her information until one week before trial. Under these circumstances, the trial court did not abuse its discretion in denying defendant's motion for a new trial. The evidence reasonably supported the trial court's findings that defendant broke and entered into the family's home with felonious intent and assaulted two of the residents with a firearm.

II

Defendant next argues that he was denied the effective assistance of counsel. Again, we disagree.

To succeed on an ineffective assistance of counsel claim, a defendant must first show that his counsel's performance was below an objective standard of reasonableness under prevailing professional norms. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). A defendant must then demonstrate that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* at 687-688. Appellate review of an ineffective assistance of counsel claim is limited to errors apparent on the record. *People v Moseler*, 202 Mich App 296, 299; 508 NW2d 192 (1993).

Defendant contends that he was denied effective assistance of counsel because his attorney failed to call certain witnesses, failed to subpoena records of the 911 calls to the police, failed to subpoena the medical records of one of the victims, and failed to request an inspection of the crime scene by an expert. Each of defendant's arguments amounts to a claim that defense counsel was unprepared for trial. A defendant may only succeed on such a claim where the lack of preparation resulted in the counsel's ignorance of valuable evidence which would have substantially benefited the defendant. *People v Caballero*, 184 Mich App 636, 642; 459 NW2d 80 (1990).

Defendant has neither identified the nontestifying witnesses nor detailed the substance of their proposed testimony. He has also failed to demonstrate to this Court what beneficial evidence he was denied by his counsel's failure to subpoena 911 records, subpoena medical records, or hire a crime scene expert. Defendant has therefore failed to show that, but for these alleged errors, the result of his trial would have been different. Because he has not demonstrated that he was prejudiced by any of his counsel's supposed errors, nor demonstrated that counsel actually committed clear errors, he has not shown that he was denied effective assistance of counsel.

III

Defendant's final argument is that this case must be remanded to the trial court for correction of his Presentence Investigative Report (PSIR).

If a defendant challenges the accuracy of his or her PSIR at sentencing and the court finds that the information was inaccurate, the court must correct the inaccurate information before transmitting the report to the Department of Corrections. MCL 771.14(5); MSA 28.1144(5). The record indicates, and the prosecutor concedes, that the trial court was aware that defendant's PSIR incorrectly stated that defendant was convicted of two counts of assault with intent to murder rather than two counts of assault with intent to commit great bodily harm. Defendant's PSIR also indicated that a sentence of five years in prison was appropriate for the felony firearm conviction when two years was the appropriate sentence.

Defendant is entitled to have these errors corrected and an amended copy of his PSIR delivered to the Department of Corrections. MCL 771.14(5); MSA 28.1144(5). In lieu of remanding for this purpose, and pursuant to the authority conferred on this Court by MCR 7.216(A), we order the trial court to perform the ministerial functions of correcting defendant's PSIR to accurately reflect his convictions and sentences and forwarding a corrected copy to the Department of Corrections.

Defendant's convictions are affirmed. The trial court or its designee shall make the necessary corrections as indicated in this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage

/s/ Daniel A. Burrell