

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LUIS CORONADO,

Defendant-Appellant.

UNPUBLISHED

April 11, 1997

No. 179810

Oakland Circuit Court

LC No. 93-124655-FH

Before: O'Connell, P.J., and Smolenski and T.G. Power*, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree criminal sexual conduct (CSC), MCL 750.520c(1)(a); MSA 28.788(3)(1)(a) (victim under thirteen years of age), and pleaded guilty to second-offense habitual offender, MCL 769.10; MSA 28.1082. Defendant was sentenced as an habitual offender on the underlying CSC offense to a term of seven to 22½years' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues that he was denied effective assistance of trial counsel. Specifically, defendant takes issue with the unchallenged introduction of hearsay evidence of a prior sexual touching he allegedly perpetrated on the victim. This evidence consisted of various witnesses who testified that the victim's mother alleged that when the victim was three years old the victim told her (the mother) that defendant had touched the victim's vagina. Defendant contends that counsel was ineffective in failing either to move in limine to bar the introduction of this inadmissible evidence or to object to the admission of this evidence at trial.

In order to succeed on a claim of ineffective assistance of counsel, defendant must first show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. Defendant must also overcome a strong presumption that counsel's assistance constituted sound trial strategy. Second, defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v*

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

Stanaway, 446 Mich 643, 687-688; 521 NW2d 557 (1994). Furthermore, a court cannot conclude a defendant was denied the effective assistance of counsel merely because a certain strategy backfired. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987).

In this case, we note that defense counsel stated as follows in his opening statement:

My client is charged with criminal sexual conduct in the second degree. That's a terrible charge, a terrible accusation. It's a case where he is accused of inappropriately touching his step-daughter.

What you will hear is that this allegation came not from the child, but from the child's mother. You'll also hear that this isn't the first time that this allegation has been made.

This is an allegation that is made by a woman, who will testify – and once she testifies, if you will watch how she testifies – and the Judge will tell you how to do that – watch and consider the mannerisms, are they being truthful, consider the weight, is there any motivation to lie.

This woman will testify that she has made this allegation before and that they split up – that she would never live with this man again. And you'll hear that they got back together again because the allegation wasn't true.

You will hear her testify that she made a mistake, and that it was in fact true, and this time it's true, and I would never live with him again. And she will testify to that.

And then you'll hear that she's back together again with the husband against whom this accusation is made.

Moreover, on cross-examination, defense counsel elicited from the emergency room physician that the physician “probably” got his history of defendant's past abuse from the mother. In addition, the following exchange occurred during defense counsel's cross-examination of a family services worker:

Q. [Defense Counsel]: Okay. I'm going to read from page one –“Mother reported that at the age of three and a half [the victim] also reported that Louie/Luis abused her.” Does that refresh your memory?

A. [Witness]: Yes.

Q. Okay. In fact, Mrs. Coronado reported that the abuse had occurred before; is that correct?

A. Yes.

Q. In fact you put that in your report? You have to answer yes or no.

A. Yes.

Accordingly, we agree with the prosecution that counsel's failure to object to the admission of evidence of defendant's prior sexual abuse was apparently part of an overall trial strategy aimed at focusing the case on the victim's mother and the defense theory that the mother manufactured the allegations of abuse and coached the victim to accuse defendant of sexual touching. We decline to decide in hindsight that defendant was denied the effective assistance of counsel simply because counsel's strategy was not successful in this case. With respect to defendant's claim that he was also denied the effective assistance of counsel because counsel failed to object to other evidence, we conclude either that counsel's failure to object was part of the same trial strategy discussed above or, assuming error, that defendant has failed to establish that he was prejudiced by the error.

Finally, we conclude that the trial court adequately articulated its reasons for the sentence imposed. *People v Poole*, 186 Mich App 213; 463 NW2d 478 (1990). Our review of the record does not indicate that the trial court erroneously believed that it was required to impose the maximum term under the habitual offender statute. *People v Green*, 205 Mich App 342, 345; 517 NW2d 782 (1994). We find no abuse of discretion. *People v Poppa*, 193 Mich App 184, 187; 483 NW2d 667 (1992).

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Thomas G. Power