

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALFRONZO LEE SPENCE, JR.,

Defendant-Appellant.

UNPUBLISHED

March 17, 1998

No. 196725

Calhoun Circuit Court

LC No. 95-3356 FC

Before: McDonald, P.J., and O'Connell and Smolenski, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to consecutive terms of two years' imprisonment for the felony-firearm conviction and four to ten years' imprisonment for the armed robbery conviction. Defendant appeals as of right. We affirm.

The first issue raised by defendant is whether the trial court erred in giving only the standard jury instructions with respect to the issue of eyewitness identification. Defendant failed to request any additional or supplemental instruction, however, and also failed to object to the instructions as given. Finding no manifest injustice on the record, we therefore decline to address this issue on appeal, as defendant has waived his right to review. *People v Flowers*, 222 Mich App 732, 735; 565 NW2d 12 (1997); *People v Messenger*, 221 Mich App 171, 177; 561 NW2d 463 (1997).

Defendant next argues that he was denied the effective assistance of counsel because his attorney failed to request a supplemental jury instruction regarding the issue of identification and also failed to request the appointment of an expert in the dangers of eyewitness identification. In order to successfully assert a claim of ineffective assistance of counsel, a defendant has the burden of establishing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment and that the errors prejudiced the defendant. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997).

In this case, the issue raised by defendant with respect to misidentification is a standard argument when issues of identification are presented. There is nothing on the record to indicate any unusual circumstance which would require additional attention to this matter in this particular case. Consequently, the standard jury instructions were sufficient to protect defendant's rights, and counsel did ensure that these instructions were included in those read to the jury. These instructions have been held to be an accurate statement of the law, see, e.g., *People v Young*, 146 Mich App 337, 338; 379 NW2d 491 (1985), and therefore preclude the additional safeguard of requiring an expert on the issues of misidentification to provide additional information with respect to this issue. The standard jury instructions were designed for the specific purpose of avoiding the potential problems of misidentification, and adequately served this purpose in the present case. Additionally, the fact that the issue of identification in this case was essentially standard also leads to the conclusion that defendant could not have been prejudiced by counsel's failure to take steps to supplement the standard safeguards by requesting the appointment of an expert to explain the inherent unreliability of eyewitness identification. We conclude that defendant has failed to establish that defense counsel's actions fell below objective standards of reasonableness or that defendant was prejudiced by these omissions. *Mitchell, supra*. Accordingly, defendant was not denied the effective assistance of counsel.

Finally, defendant argues that his sentence for armed robbery is disproportionate. We disagree. Defendant's sentence is within the sentencing guidelines' recommended minimum sentence range and, therefore, presumptively proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). The facts cited by defendant are not unusual circumstances that overcome this presumption. *Id.* Accordingly, we conclude that the court did not abuse its discretion in rendering the sentence. *Id.*

Affirmed.

/s/ Gary R. McDonald
/s/ Peter D. O'Connell
/s/ Michael R. Smolenski