STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID VINCENT DIMECH,

Defendant-Appellant.

UNPUBLISHED
May 5, 1998

No. 198523
Recorder's Court
LC No. 95-003029

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka*, JJ.

PER CURIAM.

Defendant was convicted of malicious destruction of police property, MCL 750.377b; MSA 28.609(2), and sentenced to one year of probation. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that he was denied a substantial defense by defense counsel's failure to call witnesses on his behalf. Because the record does not disclose the substance of the potential testimony of these witnesses, it cannot be said that defendant was denied a substantive defense and, consequently, that defendant was denied the effective assistance of counsel. *People v Hyland*, 212 Mich App 701, 710-711; 538 NW2d 465 (1995), vacated in part on other grounds 453 Mich 902; 554 NW2d 899 (1996).

With regard to defense counsel's failure to object during the prosecutor's opening statement, defendant has failed to rebut the presumption of sound trial strategy where the record indicates that defense counsel did not object to the domestic violence reference so as not to draw the jury's attention to the remark. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997).

With regard to the prosecutor's injection of evidence into trial that defendant was being held in the "drunk tank" on a domestic violence charge, defendant has failed to brief why he believes the evidence was inadmissible. Accordingly, defendant has abandoned this issue for appellate review. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959); *People v Kent*, 194 Mich App 206,

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

210; 486 NW2d 110 (1992). In any event, assuming without deciding that the evidence was inadmissible, defendant has failed to establish that he suffered the requisite prejudice where the evidence indicated that defendant was the only person in the "drunk tank" at the time of the breaking of the Plexiglas, where a police officer witnessed defendant break the Plexiglas, and where the parties stipulated that the domestic violence charge against defendant was dropped and the jury was informed of this stipulation. *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997).

With regard to the claim that counsel was ineffective for failing to seek a curative instruction, defendant has abandoned this issue by failing to brief why the evidence of the domestic violence charge was inadmissible. *Kent, supra*. In any event, the record indicates that the jury was informed that the charge was dropped on defendant's request in lieu of a curative instruction to remedy any prejudice arising from the admission of the evidence. On this record, defendant has failed to establish that counsel's conduct was constitutionally deficient. *Mitchell, supra*.

Finally, defendant contends that his right to a speedy trial was violated. Defendant would have been tried on November 21, 1995 had he appeared in court. Because the total delay is under eighteen months, defendant must show prejudice. *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994). Defendant claims he was prejudiced because the delay made it more difficult for defense counsel to secure the testimony of defense witnesses. Defendant has failed to demonstrate prejudice where the record fails to indicate whether these witnesses were available for the November 1995 trial and where defendant has failed to set forth the substance of the proposed testimony of these witnesses. *Id*.

We affirm.

/s/ Richard A. Bandstra
/s/ Barbara B. MacKenzie
/s/ Nick O. Holowka