

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN W. BATTS,

Defendant-Appellant.

UNPUBLISHED

July 17, 1998

No. 200311

Recorder's Court

LC No. 95-010794

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN W. BATTS,

Defendant-Appellant.

No. 200409

Recorder's Court

LC No. 95-010801

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Before: Murphy, P.J., and Young, Jr. and Michael R. Smith\*, JJ.

MEMORANDUM.

Defendant appeals by right his convictions for unarmed robbery, MCL 750.530; MSA 28.798, and felonious assault, MCL 750.82; MSA 28.277, entered after separate bench trials. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Prior to the start of defendant's trials, defense counsel informed the court that he was appointed as substitute counsel and had not had the opportunity to discuss the cases with defendant before the trial date. Counsel stated that he had received discovery material from the prosecutor, had reviewed defendant's statements, and discussed the cases with defendant that morning. He had discussed an

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

adjournment with defendant, but defendant expressed his desire to go forward with the trials. Counsel stated that he was satisfied that he was ready and prepared to proceed with the trial. Defendant stated that he agreed with counsel's statements.

On appeal, defendant asserts that the lack of consultation prior to the trial date should be deemed ineffective assistance of counsel, meriting a new trial. Although defendant identifies no prejudice, he asserts that prejudice should be presumed under the circumstances of the case.

To establish an ineffective assistance of counsel claim, defendant must show that counsel's performance was deficient and that under an objective standard of reasonableness, counsel made an error so serious that counsel was not functioning as an attorney as guaranteed under the Sixth Amendment. Defendant must overcome the presumption that the challenged action was sound legal strategy, and must establish that the deficiency was prejudicial. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994); *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991).

In a narrow spectrum of cases, courts have recognized circumstances where a defendant was denied any meaningful assistance, and prejudice will be presumed. *People v Mitchell*, 454 Mich 145, 153-155; 560 NW2d 600 (1997). This situation does not fall within that narrow spectrum. Counsel was able to prepare for trial, and had the opportunity to consult with defendant the entire morning of the trial. Counsel was able to provide meaningful assistance, and the presumption of prejudice does not apply. Where defendant has not identified any actual prejudice caused by trial counsel's actions, his ineffective assistance of counsel claim is without merit.

Affirmed.

/s/ William B. Murphy  
/s/ Robert P. Young, Jr.  
/s/ Michael R. Smith