

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALBERT J. KNAPP,

Defendant-Appellant.

UNPUBLISHED

November 17, 1998

No. 200615

Wayne Circuit Court

LC No. 96-501205

Before: Young, Jr., P.J., and Wahls and Jansen, JJ.

MEMORANDUM.

Defendant appeals by right his conviction for assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, felon in possession of a weapon, MCL 750.224f; MSA 28.421(6), and felony-firearm, MCL 750.227b; MSA 28.424(2). We affirm.

On appeal, defendant asserts that he was denied the effective assistance of counsel where trial counsel failed to present the testimony of two alibi witnesses. We disagree.

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).

There is no evidence that defendant was prejudiced by counsel's failure to call the alibi witnesses. The trial court took their testimony in a hearing on defendant's motion for new trial. As found by the trial court, the alibi testimony was not inconsistent with the testimony that defendant committed the crime. It was reasonable trial strategy for counsel to forego the alibi defense. There was no reasonable probability that the outcome would have been different if the testimony of the alibi witnesses had been presented. *Pickens, supra*. Defendant was not deprived of the effective assistance of counsel.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Myron H. Wahls

/s/ Kathleen Jansen