

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REGINALD D. WHITE,

Defendant-Appellant.

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UNPUBLISHED

March 20, 2001

No. 219146

Genesee Circuit Court

LC No. 98-003324-FC

Before: K. F. Kelly, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree felony murder, MCL 750.316(1)(b); MSA 28.548(1)(b), second-degree murder, MCL 750.317; MSA 28.549, armed robbery, MCL 750.529; MSA 28.797, kidnapping, MCL 750.349; MSA 28.581, and carjacking, MCL 750.529a(1); MSA 28.797(a)(1). Those convictions arose from defendant's involvement in the death of an elderly man who was robbed, beaten, stabbed and shot when he attempted to pay his wife's drug debt. Defendant appeals as of right. We vacate defendant's convictions of second-degree murder, armed robbery and kidnapping, but affirm in all other respects.

Defendant argues that he was denied the effective assistance of counsel because counsel was unprepared to adequately cross-examine a codefendant and a police witness. Because defendant failed to preserve this issue by moving for a new trial or an evidentiary hearing, our review is limited to mistakes apparent from the existing record. *People v Ginther*, 390 Mich 436, 442-443; 212 NW2d 922 (1973); *People v Fike*, 228 Mich App 178, 181; 577 NW2d 903 (1998). Effective assistance of counsel is presumed, and defendant's burden to prove otherwise is a heavy one. *People v Eloby (After Remand)*, 215 Mich App 472, 476; 547 NW2d 48 (1996). To justify reversal, "a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial." *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Defendant argues that counsel was ineffective for lack of preparation. Although unpreparedness for trial can constitute ineffective assistance of counsel, defendant must demonstrate that his trial counsel's lack of preparation resulted in prejudice. *People v Caballero*, 184 Mich App 636, 640; 459 NW2d 80 (1990). To demonstrate prejudice, "the 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 Stanaway*, 446 Mich 643, 687-688; 521 NW2d

557 (1994). In this case, even assuming that counsel's lack of preparation constituted deficient performance, defendant has failed to show any resultant prejudice. Our review of the record leads us to conclude that defendant's trial counsel conducted an adequate cross-examination of both the codefendant and the police witness. We therefore conclude that defendant received the effective assistance of counsel.

Defendant also argues that his convictions of both first-degree felony murder and second-degree murder for the death of the same victim violate the constitutional protections against double jeopardy. US Const, Am V; Const 1963, art 1, § 15. The prosecutor concedes error. Multiple murder convictions for the death of a single victim do violate the constitutional protections against double jeopardy. *People v Clark*, 243 Mich App 424, 429-430; \_\_\_ NW2d \_\_\_ (2000); *People v Bigelow*, 229 Mich App 218, 220; 581 NW2d 744 (1998). Therefore, defendant's conviction of second-degree murder must be vacated. *Clark, supra* at 429-430; *People v Passeno*, 195 Mich App 91, 96; 489 NW2d 152 (1992), overruled in part by *Bigelow, supra* at 221.

Although defendant does not raise the issue, we recognize that defendant's multiple convictions create another double jeopardy concern. The jury convicted defendant of first-degree felony murder predicated on not one, but two underlying felonies: armed robbery and kidnapping. Convicting a defendant of both felony-murder and the underlying felony violates the constitutional protections against double jeopardy, and the appropriate remedy is to vacate the conviction and sentence for the underlying felony. *People v Gimotty*, 216 Mich App 254, 259-260; 549 NW2d 39 (1996). Therefore, defendant's convictions of both armed robbery and kidnapping must be vacated.

Accordingly, we vacate defendant's convictions of second-degree murder, armed robbery and kidnapping, along with the sentences imposed for those convictions. We affirm defendant's remaining convictions and sentences.

/s/ Kirsten Frank Kelly  
/s/ Michael R. Smolenski  
/s/ Patrick M. Meter