

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RHONDA LEE GEETHING,

Defendant-Appellant.

UNPUBLISHED

March 23, 2001

No. 221457

Calhoun Circuit Court

LC No. 98-005033-FH

Before: Griffin, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant was convicted by a jury of seven counts of criminal sexual conduct, third degree, MCL 750.520d(1)(a); MSA 28.788(4)(1)(a), and five counts of criminal sexual conduct, fourth degree, MCL 750.520e(1)(a); MSA 28.788(5)(1)(a). Defendant was sentenced to a term of imprisonment of seven to fifteen years for each CSC-III conviction and to one to two years for each CSC-IV conviction. She appeals as of right, and we affirm.

Defendant alleges that she was deprived of her Sixth Amendment right to the effective assistance of counsel where her trial counsel failed to seek severance of the twelve charges into five separate trials, one for each complainant. We disagree.

To establish a claim of ineffective assistance of counsel, defendant must show that her trial 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 by the Sixth Amendment. *People v Harris*, 201 Mich App 147, 154; 505 NW2d 889 (1993). Additionally, defendant must show that but for counsel's error there would have been a reasonable probability that the result of the proceeding would have been different and the result was fundamentally unfair or unreliable. *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997). This test requires the greatest level of factual inquiry into defense counsel's actions and the effect of those actions on the outcome of the trial. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997). Defendant has the burden to overcome "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.*

We generally will not substitute our judgment for that of trial counsel in matters of trial strategy. *People v Thomas*, 126 Mich App 611, 615; 337 NW2d 598 (1983). The question is not whether, in retrospect, counsel's advice was right or wrong; it is whether the advice was within

the range of competence demanded of lawyers in criminal cases. *People v Haynes (After Remand)*, 221 Mich App 551, 558; 562 NW2d 241 (1997).

Defendant contends that defense counsel provided ineffective assistance of counsel because the motion to sever, filed but then abandoned, would have been granted if counsel had pursued it. However, defendant has failed to rebut the presumption of sound trial strategy.

Defense counsel stated on the record that his decision not to pursue the motion to sever was one of trial strategy, in response to what he perceived to be inadequate information regarding the specifics of each alleged incident. Counsel's strategy involved the introduction of three types of witnesses: those who would testify that defendant did not have an opportunity to commit the charged offenses, those who would testify that the complainants were lying, and those who would testify regarding defendant's good character. Defense counsel decided that a combined trial would be the most effective way to use these witnesses to show that complainants had fabricated the story against defendant. Rather than attempt to obtain acquittal for defendant in five different trials, defense counsel decided that defendant's best chance would be to have all of the complainants heard in one proceeding and then attempt to paint defendant as the victim of youthful bravado that got out of hand. We conclude that defense counsel's decision not to pursue the motion to sever and instead take an "all or nothing" approach was reasonable in light of the circumstances, including the likelihood that evidence of at least some of the other charged incidents would likely have been admitted at the separate trials. While in hindsight defense counsel's strategy failed, defendant has failed to show that defense counsel's decision fell below an acceptable range of competent trial strategies. Therefore, we find that defendant has failed to carry her burden to show that defense counsel provided ineffective assistance of counsel.

Affirmed.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Helene N. White