

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREG DENNIS EICKHOFF,

Defendant-Appellant.

UNPUBLISHED

October 19, 2001

No. 229335

Delta Circuit Court

LC No. 00-006490-FH

Before: Griffin, P.J., and Markey and Meter, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit great bodily harm less than murder, MCL 750.84. Defendant was sentenced as a fourth habitual offender to 3½ to 20 years' imprisonment, MCL 769.12. We affirm.

Defendant first argues that the evidence was insufficient to prove beyond a reasonable doubt that he specifically intended his victim great bodily harm. We disagree. This Court reviews issues regarding sufficiency of the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found all the necessary elements of the offense beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268; 380 NW2d 11 (1985).

The elements of assault with intent to do great bodily harm less than murder are (1) an attempt or offer with force or violence to do corporal hurt to another, and (2) an intent to do great bodily harm less than murder. MCL 750.84; *People v Pena*, 224 Mich App 650, 659; 569 NW2d 871 (1997), modified on other grounds 457 Mich 885 (1998). Assault with intent to commit great bodily harm less than murder is a specific intent crime. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). A defendant's specific intent may be inferred from all the facts and circumstances. *People v Brown*, 159 Mich App 428, 431; 407 NW2d 21 (1987).

The testimony established that during the assault, defendant knocked the victim to the ground and kicked him several times. Although the victim's testimony was inconsistent with respect to whether he lost consciousness during the assault, one witness testified that defendant repeatedly jumped on the victim's head while the victim was on the ground unconscious. This Court must not interfere with a jury's determination on the weight of the evidence or credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). It was reasonable for the jury to determine that defendant intended to inflict

great bodily harm. *Brown, supra* at 431.

Defendant also claims that the trial court erred by denying his motion for directed verdict. Because the prosecution presented sufficient evidence for the jury to find, beyond a reasonable doubt, that defendant committed an assault with intent to commit great bodily harm less than murder, we find no merit in this claim.

Finally, defendant argues that he was denied effective assistance of counsel when his attorney (1) failed to present an intoxication defense, (2) failed to argue the lesser included charge of aggravated assault, and (3) allegedly denied him his constitutional right to confront those witnesses against him. Whether defendant was denied the effective assistance of counsel is a constitutional question, which this Court reviews de novo. *People v Pickens*, 446 Mich 298, 359; 521 NW2d 797 (1994) (Levin, J. concurring in part, dissenting in part); *People v Pennington*, 240 Mich App 188, 191; 610 NW2d 608 (2000). A claim of ineffective assistance of counsel should be raised by a motion for new trial or an evidentiary hearing. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). Because defendant failed to preserve this issue for appeal, review has been largely forfeited and limited to the existing record. *Id.*

To establish a claim for ineffective assistance of counsel, a defendant must show two things: first, that his attorney's performance was deficient under an objective standard of reasonableness, and second, that there is a reasonable probability that, but for the deficiency, the jury would not have found the defendant guilty. *Snider, supra* at 424, citing *Pickens, supra* at 298. An attorney is presumed to provide effective assistance of counsel; therefore, a defendant bears a heavy burden of proving otherwise. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994), cert den sub nom *Michigan v Caruso*, 513 US 1121; 115 S Ct 923; 130 L Ed 2d 802 (1995). Further, a defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

After reviewing the existing record, we disagree with defendant's assertion that he was denied effective assistance of counsel when his attorney failed to present an intoxication defense and failed to argue that if he was guilty, he was guilty of aggravated assault and not assault with intent to commit great bodily harm. Based on the existing record, defendant has failed to overcome the strong presumption that his attorney's performance constituted sound trial strategy. *Id.* Further, we disagree with defendant's assertion that his attorney denied him his constitutional right to confront those witnesses against him. The confrontation clause is satisfied if a defendant has a full and fair opportunity to expose a witness' infirmities – demonstrating to the jury the reasons why a witness should not be believed. *People v Gearn*s, 457 Mich 170, 186; 577 NW2d 422 (1998), rev'd on other grounds *People v Lukity*, 460 Mich 484, 494; 596 NW2d 607 (1999). Based on the record, it is apparent that defendant's attorney cross-examined the disputed witness and elicited testimony from her that allowed the jury to adequately weigh her credibility.

Affirmed.

/s/ Richard Allen Griffin
/s/ Jane E. Markey
/s/ Patrick M. Meter