STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY DORRELL PELKEY,

Defendant-Appellant.

UNPUBLISHED
August 14, 2003

No. 237895
Kent Circuit Court
LC No. 01-001912-FC

Before: Whitbeck, C.J., and Smolenski and Murray, JJ.

PER CURIAM.

Defendant was charged with assault with intent to commit murder, MCL 750.83, and resisting and obstructing a police officer, MCL 750.749. The jury acquitted him of the former offense, but convicted him of the latter. The trial court sentenced him as a fourth habitual offender, MCL 769.12, to 2-1/2 to 15 years' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues that the district court abused its discretion in binding him over for trial on the resisting and obstructing a police officer charge. According to defendant, there was insufficient evidence that he intended to resist and obstruct the police officers because he was intoxicated, irrational, emotional, and despondent. Defendant failed to raise this issue below by filing a motion to quash and, therefore, we review for plain error only. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999).

We find defendant's argument to be without merit. Resisting and obstructing a police officer is not a specific intent crime, but rather a general intent crime, and voluntary intoxication is not a defense to general intent crimes. *People v DeLong*, 128 Mich App 1, 3; 339 NW2d 659 (1983). A general intent crime only requires proof that the defendant purposefully or voluntarily performed the wrongful act. *People v Henry*, 239 Mich App 140, 144; 607 NW2d 767 (1999). To resist or obstruct, as contemplated in the statute, the defendant's conduct must constitute threatened or actual physical interference. *People v Vasquez*, 465 Mich 83, 90-91; 631 NW2d 711 (2001). The police officer's testimony as to defendant's behavior when he approached the defendant, as well as defendant's admissions that he charged the officer when told to stop and wrestled with him, provided sufficient evidence to find that there was probable cause to establish that the offense occurred, and thus, there was no error.

Defendant next argues that defense counsel was ineffective in several instances. To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that counsel's representation was so prejudicial that it denied the defendant a fair trial. *Strickland v Washington*, 466 US 668, 687-688; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). Defendant must also show that the resultant proceedings were fundamentally unfair or unreliable, *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). A defendant has suffered prejudice from counsel's performance if there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *Toma, supra* at 302-303. Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *Noble, supra* at 661-662.

First, defendant argues that defense counsel was ineffective when he conceded defendant's guilt of resisting and obstructing a police officer. However, a lawyer does not per se render ineffective assistance by conceding guilt of a lesser offense, as this tactic is a well-accepted trial strategy. *People v Walker*, 167 Mich App 377, 382; 422 NW2d 8, overruled in part on other grounds *People v Mitchell*, 456 Mich 693 (1998). Here, defendant was also on trial for assault with intent to commit murder, an offense that is punishable by life in prison. MCL 750.83. This Court will not substitute its judgment for that of counsel regarding matters of trial strategy. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). Further, we note that defense counsel's strategy of conceding defendant's guilt of the lesser offense appears to have been successful because the jury acquitted defendant of the assault with intent to commit murder offense.

Second, defendant's arguments that defense counsel was ineffective for failing to request jury instructions on the defenses of voluntary intoxication and diminished capacity are meritless. As noted above, voluntary intoxication is not a defense to resisting and obstructing a police officer, *DeLong, supra* at 3, and the defense of diminished capacity is no longer viable in Michigan. *People v Carpenter*, 464 Mich 223, 240; 627 NW2d 276 (2001). Moreover, even had the defense of diminished capacity been available to defendant, the defense only negated the mens rea of specific intent crimes, *Id*. at 232, and thus, would not have been applicable to the resisting and obstructing charge.

Third, defendant argues that defense counsel was ineffective for failing to request Deputy DeKorte's medical records to determine the extent to which he was injured during the incident at issue. Although the main purpose of the resisting and obstructing statute is to protect police officers from physical harm, *Vasquez, supra* at 92, physical injury to the officer is not an element of the offense, MCL 750.749. "[O]ne may threaten to or actually physically interfere with a police officer without threatening to or actually hurting a police officer . . . ." *Vasquez, supra* at 94. Because it is not necessary that an officer be injured in order for a defendant to have resisted and obstructed a police officer, defense counsel was not ineffective for not requesting Deputy DeKorte's medical records.

Defendant finally argues that the judgment of sentence and the basic information report should be amended because they contain certain erroneous statements. In a stipulated order dated April 15, 2003, the trial court granted defendant the relief he now seeks on appeal, and,

therefore, this issue is now moot. *Schumacher v Tidswell*, 138 Mich App 708, 717; 360 NW2d 915 (1984).

Affirmed.

/s/ William C. Whitbeck
/s/ Michael R. Smolenski
/s/ Christopher M. Murray