

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON DEMETRIUS DEAN,

Defendant-Appellant.

UNPUBLISHED
November 20, 2003

No. 242135
Ionia Circuit Court
LC No. 01-011959-FH

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

MEMORANDUM.

Defendant appeals by right his jury conviction for prisoner in possession of a weapon, MCL 800.283(4). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant alleges that he was denied the effective assistance of counsel because failed to investigate the case and present a viable defense. We disagree.

Defendant's conviction arises out of an altercation that took place at the Ionia Maximum Correctional Facility on October 6, 2000. Corrections Officer John Harris testified that he was the yard officer, and he observed defendant unravel a chain link fence and attack another inmate. Defendant also had a sharpened receptacle cover in his hand, which he used to attack the inmate. After officers subdued the prisoners, they recovered the weapon. The other corrections officers testified consistently with Harris. Prison doctor Michael Engelsgerd testified that the other inmate received injuries consistent with being cut by an instrument in a fight.

Effective assistance of counsel is presumed, and defendant bears a heavy burden of proving otherwise. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002); *People v Rocky*, 237 Mich App 74, 76; 601 NW2d 887 (1999). Defendant must meet the test established by *Strickland v Washington*, 466 US 668, 689; 104 S Ct 2052; 80 L Ed 2d 674 (1984). First, defendant must show that counsel's performance was deficient as measured against objective reasonableness under the circumstances according to prevailing professional norms. *Id.*, at 687-688; *People v Pickens*, 446 Mich 298, 312-313; 521 NW2d 797 (1994). Second, defendant must show the deficiency was so prejudicial that he was deprived of a fair trial. *Strickland, supra* at 687-688; *Pickens, supra*, at 309. There must be a reasonable probability that but for counsel's alleged unprofessional errors the trial outcome would have been different. *Strickland, supra* at 694; *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). Moreover, constitutional

error will not be found unless counsel's error was so serious that it resulted in a fundamentally unfair or unreliable trial. *Lockhart v Fretwell*, 506 US 364, 369-370; 113 S Ct 838; 122 L Ed 2d 180 (1993); *Pickens*, *supra* at 312 n 12.

Because no evidentiary hearing was held, our review is limited to the record. *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973); *People v Rodgers*, 248 Mich App 702, 713-714; 645 NW2d 294 (2001). Counsel's failure to call witnesses is presumed to be trial strategy. *People v Mitchell*, 454 Mich 145, 163; 560 NW2d 600 (1997); *Rockey*, *supra*. Also, defendant has failed to show that had additional witnesses been presented, the factfinder would have had a reasonable doubt in respect to defendant's guilt. *Pickens*, *supra* at 327; *Rockey*, *supra* at 76-78. Defendant has failed to overcome the presumption that counsel rendered effective assistance; his trial was fair and the result reliable. *LeBlanc*, *supra* at 578.

We affirm.

/s/ Jessica R. Cooper

/s/ Jane E. Markey

/s/ Patrick M. Meter