

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFERY G. MOORE,

Defendant-Appellant.

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UNPUBLISHED  
February 17, 2004

No. 243631  
Wayne Circuit Court  
LC No. 00-011290

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

MEMORANDUM.

Defendant was charged with assault with intent to do great bodily harm less than murder. MCL 750.84. Following a jury trial, he was convicted of felonious assault, MCL 750.82, and later sentenced as an habitual offender, third offense, MCL 769.11, to thirteen months to eight years in prison. He appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant’s sole claim on appeal is that defense counsel was ineffective for calling his sister to present character evidence because it opened the door for the prosecutor to inquire about his prior convictions which otherwise would have been inadmissible. Because defendant failed to raise this claim below in a motion for a new trial or an evidentiary hearing, review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

“Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy. This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel’s competence with the benefit of hindsight.” *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999) (citations omitted). “The fact that defense counsel’s strategy may not have worked does not constitute ineffective assistance of counsel.” *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). Our review of the record fails to reveal any egregious circumstances warranting a conclusion that counsel was ineffective. The cross-examination of defendant’s sister did not elicit the sole inculpatory evidence against him, as was the case in *People v Dalessandro*, 165 Mich App 569; 419 NW2d 609 (1988), and defense counsel’s overall performance was not so bizarre as to prejudice the jury against her and her client, as was the case in *Ward v United States*, 995 F2d 1317 (CA 6, 1993). Defendant has failed to overcome the presumption of effective assistance. *People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001), *aff’d* 468 Mich 233 (2003).

Affirmed.

/s/ Jessica R. Cooper

/s/ Peter D. O'Connell

/s/ Karen M. Fort Hood