

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY L. HENRY,

Defendant-Appellant.

UNPUBLISHED

June 15, 2004

No. 244240

Wayne Circuit Court

LC No. 00-012928-01

Before: Sawyer, P.J., and Gage and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial convictions for assault with intent to do great bodily harm, MCL 750.84, felon in possession of a firearm, MCL 750.224f, and felony-firearm, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that he was denied the effective assistance of counsel where his trial attorney failed to secure a medical expert witness to testify about the nature of complainant's wound. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). Where no evidentiary hearing was held, this Court's review is limited to mistakes apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997).

If there was evidence that complainant was injured by a gunshot fired in a downward direction, trial counsel could have been ineffective in failing to present such evidence. However, defendant has provided no basis to conclude that favorable evidence regarding the bullet's travel exists. While defense counsel could have obtained an expert witness and examined complainant and his medical records, there is no showing that this would have provided information favorable to defendant's case. Defendant has failed to meet his burden of presenting evidence to support his claim, and there are no mistakes apparent on the record.

There was sufficient evidence to support the convictions. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the

evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Complainant's testimony, if believed, was sufficient to support defendant's convictions. Where this Court is required to make credibility choices in favor of the verdict, there is no support for defendant's argument that the evidence was insufficient.

Affirmed.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens