

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELGIN RICHARD MARION,

Defendant-Appellant.

UNPUBLISHED

January 17, 2006

No. 254614

Wayne Circuit Court

LC No. 03-013064-01

Before: O’Connell, P.J., and Smolenski and Talbot, JJ.

MEMORANDUM.

Defendant appeals as of right from his jury trial conviction of one count of armed robbery, MCL 750.529, and one count of possession of a firearm during the commission of a felony, MCL 750.227b. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Defendant’s sole argument on appeal is that he received ineffective assistance of counsel. Specifically, defendant argues that his trial counsel’s failure to call and examine a purported alibi witness was objectively unreasonable and prejudicial in that it denied him a substantial defense. We disagree. Our review of this issue is limited to the record. See *People v Mack*, 265 Mich App 122, 125; 695 NW2d 342 (2005).

A criminal defendant has the right to the effective assistance of counsel. *Strickland v Washington*, 466 US 668, 696; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pubrat*, 451 Mich 589, 596; 548 NW2d 595 (1996). To establish ineffective assistance of counsel, the defendant must first show: (1) that counsel’s performance fell below an objective standard of reasonableness under the prevailing professional norms; and (2) that there is a reasonable probability that, but for counsel’s error, the result of the proceedings would have been different. *Bell v Cone*, 535 US 685, 695; 122 S Ct 1843; 152 L Ed 2d 914 (2002); *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). That is, defendant must show that counsel’s error was so serious that the defendant was deprived of a fair trial, i.e., the result was unreliable. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002).

“[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *People v Grant*, 470 Mich 477, 485; 684 NW2d 686 (2004), quoting *Strickland*, *supra* at 690-691. The record in this case reveals that defense counsel properly investigated defendant’s alleged alibi. Indeed, he made repeated

attempts to contact and secure the alleged alibi witness, but for whatever reason the witness chose not to appear.

Further, defendant failed to establish the requisite prejudice to prevail on a claim of ineffective assistance. Specifically, the record undermines defendant's assertion that the witness would provide him with an alibi. In addition, the store employee positively identified defendant as the person who robbed her at gunpoint. The commission of the underlying robbery was undisputed. Therefore, defendant failed to show a reasonable probability that the outcome would have been different but for counsel's alleged error. *Toma, supra* at 302-303.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot