

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY LEWIS SMITH,

Defendant-Appellant.

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UNPUBLISHED

November 14, 2006

No. 262993

Oakland Circuit Court

LC No. 2001-177323-FH

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of operating a vehicle under the influence of liquor (OUIL) causing miscarriage, MCL 750.90d(a), OUIL causing serious impairment of a body function, MCL 257.625(5), carrying a concealed weapon in a motor vehicle, MCL 750.227(2), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as a habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 29 months to 15 years for each of the first four convictions, and a consecutive two-year term for the felony firearm conviction. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that he was denied the effective assistance of counsel because counsel conceded guilt on all charges except OUIL causing a miscarriage. 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).

To prevail on a claim of ineffective assistance of counsel, a defendant must show that his counsel's performance was objectively unreasonable and the representation was so prejudicial that he was deprived of a fair trial. To demonstrate prejudice, the defendant must show that, but for counsel's error, there was a reasonable probability that the result of the proceedings would have been different. This Court presumes that counsel's conduct fell within a wide range of reasonable professional assistance, and the defendant bears a heavy burden to overcome this presumption. [*People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001)(citations omitted).]

A complete concession of the defendant's guilt renders counsel ineffective. *People v Kryzstopaniec*, 170 Mich App 588, 596; 429 NW2d 828 (1988). Contrary to defendant's contention, defense counsel did not concede his guilt to all but one charge. The record clearly shows that, in his opening statement, defense counsel admitted defendant's guilt to OUIL causing serious impairment of body function, but disputed his guilt on the remaining charges. Even if counsel had conceded defendant's guilt to all but the most serious offense, that did not necessarily render counsel ineffective. "Where the evidence obviously points to defendant's guilt, it can be better tactically to admit to the guilt and assert a defense or admit to guilt on some charges but maintain innocence on others." *People v Walker*, 167 Mich App 377, 382; 422 NW2d 8 (1988), overruled in part on other grounds by *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998).

To the extent defendant contends that counsel was ineffective for stipulating to most of the facts, he has failed to establish a right to relief. The facts to which counsel stipulated were consistent with the evidence adduced at the preliminary examination and there is nothing in the record to suggest that, had the prosecutor called witnesses or presented other evidence regarding the accident and the subsequent discovery of the gun, the evidence would have been inadmissible or the relevant facts would have been any different from those to which counsel stipulated. Defendant has not shown that, absent counsel's stipulations, the outcome of the trial likely would have been different.

Defendant's claim that he is entitled to additional sentence credit is moot. Defense counsel and the prosecutor stipulated to correct the error and the trial court amended the judgment of sentence accordingly.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Christopher M. Murray  
/s/ Pat M. Donofrio