

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TODD WILLIAM REINHOLT,

Defendant-Appellant.

UNPUBLISHED
February 12, 2009

No. 282148
Kent Circuit Court
LC No. 07-002073-FH

Before: Markey, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

Following a jury trial, defendant Todd William Reinholt was convicted of arson of a dwelling house, MCL 750.72. He was sentenced as an habitual offender, second offense, MCL 769.10, to 12-1/2 to 30 years' imprisonment for his conviction. He appeals by right. We affirm.

On January 21, 2007, a house located at 46 College in Grand Rapids, Michigan, was completely destroyed by fire. At the time of the fire, the house had been renovated into apartments. Defendant rented an apartment on the third floor of the house. Evidence presented at trial demonstrated that defendant had recently lost his job, was being evicted from his apartment for nonpayment of rent, and had received divorce papers the day of the fire. Shortly before the smoke detectors alerted tenants to the fire, two tenants saw defendant walking up the stairs from the basement. Two fire investigators, whom the trial court designated as expert witnesses, concluded the fire was intentionally started in the basement.

Defendant argues defense counsel was ineffective for the following reasons: 1) defense counsel did not frequently meet with defendant to discuss trial strategy before the trial; 2) defense counsel failed to call witnesses to challenge the credibility of the prosecution's witnesses; 3) defense counsel waived defendant's right to testify without defendant's consent, and 4) a breakdown in the relationship between defendant and defense counsel led to errors at trial. Thus, the cumulative errors denied defendant effective assistance of counsel. We disagree.

Because defendant did not preserve this issue, this Court's review of defendant's claim of ineffective assistance of counsel is limited to errors apparent on the record. *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2001). To prevail on a claim of ineffective assistance of counsel, defendant must prove two components: 1) deficient performance, and 2) prejudice. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). To satisfy the first component,

defendant must show that “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland, supra* at 687. In other words, defendant must demonstrate that counsel’s performance fell below an objective standard of reasonableness. To prevail on this component, defendant also “must overcome a strong presumption that counsel’s performance constituted sound trial strategy.” *Carbin, supra* at 600. The second component requires the defendant to show “the existence of a reasonable probability that, but for the counsel’s error, the result of the proceeding would have been different.” *Id.* Defendant must satisfy both components to prevail. *Id.* In addition, “this Court neither substitutes its judgment for that of counsel regarding matters of trial strategy, nor makes an assessment of counsel’s competence with the benefit of hindsight.” *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004). “Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim.” *Carbin, supra* at 600.

First, defendant claims defense counsel was deficient because they only met twice before the trial and defense counsel failed to consult defendant about the defense strategy. There is no evidence in the record to support defendant’s claim. Thus, defendant has not established a factual predicate for this claim of ineffective assistance of counsel. *Carbin, supra* at 600. Because this Court’s review is limited to errors apparent on the record and defendant is required to provide the factual predicate for his claim, defendant cannot prevail on this claim. *Id.*; *Knapp, supra* at 385.

Second, defendant contends defense counsel was ineffective because he did not call five witnesses, who defendant claims would have challenged the credibility of the prosecution’s witnesses. Counsel’s decisions regarding what evidence to present, whether to call witnesses, or how to question witnesses are all presumed to be matters of trial strategy. *People v Horn*, 279 Mich App 31, 39; 755 NW2d 212 (2008). In addition, counsel’s “decision whether to call witnesses is a matter of trial strategy which can constitute ineffective assistance only when the failure to do so deprives the defendant of a substantial defense.” *People v Hoyt*, 185 Mich App 531, 537-538; 462 NW2d 793 (1990). “A substantial defense is one that might have made a difference in the outcome of the trial.” *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). The record does not support that any of the people defendant identified would have testified or would have offered the testimony he claims in his appellate brief. The record also does not establish what “substantial defense” defendant was denied by defense counsel’s decision. *Hoyt, supra* at 537-538. Therefore, defense counsel’s decision to not call these witnesses is properly described as trial strategy, and this Court will not substitute its judgment for that of defense counsel. *Matuszak, supra* at 58. Defendant has not overcome the strong presumption that defense counsel’s actions constituted sound trial strategy. *Id.*; *Carbin, supra*.

Third, defendant contends that defense counsel was deficient for not allowing defendant to testify in his own defense. Defendant has failed to establish the factual predicate for this claim. The record is completely devoid of any information explaining why defendant did not testify or how this decision was made. In addition, “there is no requirement in Michigan that there be an on-the-record waiver of a defendant’s right to testify.” *People v Harris*, 190 Mich App 652, 661; 476 NW2d 767 (1991). Accordingly, defendant’s argument that defense counsel should have explained on the record why defendant did not testify is meritless. *Id.*

Fourth, defendant maintains the breakdown of the relationship between defense counsel and defendant rendered defense counsel ineffective. The only evidence in the record to support this claim is a motion to withdraw defense counsel filed several weeks before trial. The motion generally asserted that there was a breakdown in the attorney/client relationship. The record does not establish that the motion was decided. The record also does not provide any additional information about any breakdown in the relationship. At the start of trial, there was no mention of a breakdown in the attorney/client relationship. The fact that there was a disagreement between defense counsel and defendant does not, in and of itself, establish that defense counsel was ineffective. Defendant fails to specify any errors that occurred because of this disagreement. If defendant is relying on the failure of counsel to call the previously identified witnesses or testify himself as a cause of the breakdown, the record does not support his claim.

This Court's review is limited to errors apparent on the record, and there is no basis for defendant's claim that defense counsel was in any manner deficient. *Knapp, supra* at 385. Defendant has not met his heavy burden to demonstrate that a new trial is warranted on grounds that his counsel was ineffective. *Carbin, supra* at 599-600. Thus, his claim of ineffective assistance of counsel must fail.

Finally, defendant argues that the alleged errors cumulatively constitute ineffective assistance of counsel; however, none of defendant's claims established he received ineffective assistance of counsel. Therefore, "a cumulative effect of errors is incapable of being found." *People v Mayhew*, 236 Mich App 112, 128; 600 NW2d 370 (1999).

We affirm.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Stephen L. Borrello