

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LORENZO EDWARD ANTHONY,

Defendant-Appellant.

UNPUBLISHED

May 11, 2010

No. 290241

Wayne Circuit Court

LC No. 08-011286-FC

Before: TALBOT, P.J., and FITZGERALD and M. J. KELLY, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(b), and was sentenced to concurrent prison terms of 16 to 25 years for each conviction. He appeals as of right. We affirm.

Although defendant argues that the evidence was insufficient to support his convictions, he does not dispute that the testimony, if believed, was sufficient to establish each element of the crimes charged beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Rather, defendant contends that the testimony of the prosecution's witnesses was not credible. Witness credibility is a matter of weight, not sufficiency, of the evidence. *People v Scotts*, 80 Mich App 1, 9; 263 NW2d 272 (1977). Further, while the trial court's factual findings are reviewed for clear error, *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006), the trial court "may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict." *People v Cummings*, 139 Mich App 286, 293-294; 362 NW2d 252 (1984). This Court will not substitute its judgment for that of the trial court, but will defer to the trial court's resolution of factual issues that involve the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993). The trial court gave a cogent and rational explanation for accepting the victim's testimony and rejecting defendant's testimony. That explanation was based on the evidence introduced at trial, and the court's findings are not clearly erroneous. *People v Snell*, 118 Mich App 750, 755-756; 325 NW2d 563 (1982).

Defendant also argues that defense counsel was ineffective for failing to give a closing argument. Because defendant did not raise this issue in a motion for a new trial or request for an evidentiary hearing below, *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987), our review is limited to errors apparent from the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002); *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). "To

establish his claim, defendant must first show that (1) his trial counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms; and (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. Counsel is presumed to have provided effective assistance, and the defendant must overcome a strong presumption that counsel's assistance was sound trial strategy." *People v Horn*, 279 Mich App 31, 37-38 n 2; 755 NW2d 212 (2008) (citations omitted).

The record discloses that defense counsel challenged the prosecution's evidence by cross-examining each prosecution witness regarding his or her testimony, impeaching witnesses with their preliminary examination testimony, and offering defendant's own testimony to show that he had been falsely accused. However, counsel declined to offer a closing argument. The decision whether to give a closing argument is a matter of trial strategy, *In re Ayres*, 239 Mich App 8, 23; 608 NW2d 132 (1999), and this Court will not substitute its judgment for that of counsel regarding matters of trial strategy. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). This was a nonjury trial. The trial court was plainly aware that it was required to decide whether it believed the prosecution or defense witnesses, and was aware, through defense counsel's cross-examination, of the problems with each witness's testimony. Under the circumstances, defendant has failed to show that defense counsel's decision to waive closing argument was objectively unreasonable, and defendant has not overcome the presumption of sound trial strategy. *People v Harlan*, 129 Mich App 769, 778-779; 344 NW2d 300 (1983); *People v Burns*, 118 Mich App 242, 247; 324 NW2d 589 (1982).

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Michael J. Kelly