

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORNELIUS TRIPLETT,

Defendant-Appellant.

UNPUBLISHED
December 28, 2010

No. 294819
Wayne Circuit Court
LC No. 09-011943-FH

Before: MURPHY, P.J., and METER and GLEICHER, JJ.

PER CURIAM.

Cornelius Triplett challenges his jury trial conviction of aggravated assault, MCL 750.81a(1), asserting instructional error regarding the jury verdict form and ineffective assistance of counsel. Triplett was sentenced to nine months in jail. We decide this appeal without oral argument pursuant to MCR 7.214(E), and affirm.

Triplett was charged in the alternative with assault with intent to do great bodily harm less than murder, MCL 750.84, and aggravated assault, MCL 750.81a(1). Specifically, Triplett contends that the trial court failed to properly instruct the jury that it could find him not guilty of either offense and neglected to use a verdict form that gave the jury the opportunity to return a general “not guilty” verdict.¹ In the alternative, Triplett argues that his trial counsel was ineffective for failing to object to the lower court’s jury instructions and the verdict form.

At the outset, we deem Triplett’s claim of instructional error to have been waived, because trial counsel expressly approved the lower court’s decision to instruct the jury as if both charges, aggravated assault and assault with intent to do great bodily harm, were part of a single count. *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2002). Counsel also affirmatively indicated his satisfaction with the jury instructions provided by the court, *People v Chapo*, 283 Mich App 360, 372-373; 770 NW2d 68 (2009); *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004), resulting in the absence of any “error” for this Court to review.

¹ A claim regarding the verdict form is reviewed as a jury instruction issue. *People v Garcia*, 448 Mich 442, 483-484; 531 NW2d 683 (1995).

People v Carter, 462 Mich 206, 219-220; 612 NW2d 144 (2000) (footnote omitted). Even had Triplett's counsel not waived any error, our review of the lower court's verbal instructions to the jury and verdict form do not support Triplett's contention of error. Consequently, we limit our review only to Triplett's claim alleging ineffective assistance of counsel.

Because Triplett did not raise a claim of ineffective assistance of counsel in the trial court, 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 a claim for ineffective assistance of counsel, a defendant must "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." *People v Horn*, 279 Mich App 31, 37-38 n 2; 755 NW2d 212 (2008) (citation omitted).

The trial court instructed the jury on assault with intent to do great bodily harm and "on the alternate offense of aggravated assault." It repeatedly instructed the jury that it could find defendant guilty of assault with intent to do great bodily harm *or* aggravated assault *or* not guilty. The trial court further instructed the jury that if it had "reasonable doubt as to whether the defendant was present and participated in the crimes I've defined for you, you must find him not guilty." The verdict form contained only one unidentified count and instructed the jury to select one of three options for that count: not guilty, or guilty of assault with intent to do great bodily harm, or guilty of aggravated assault. Contrary to Triplett's assertions, the verdict form provided to the jury did not restrict the option of "not guilty" to one charge or the other, as occurred in *People v Wade*, 283 Mich App 462, 465, 468; 771 NW2d 447 (2009), was consistent with the trial court's instructions, and permitted the jury to return a general verdict of "not guilty." Even if the verdict form had separated the charges into two separate counts, the verdict form would not have differed substantially. See CJI2d 3.28. Because we determine there was no instructional error, Triplett's counsel was not ineffective for failing to object either to the trial court's instructions or to the verdict form provided to the jury. *People v Goodin*, 257 Mich App 425, 433; 668 NW2d 392 (2003).

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher