

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
April 12, 2011

v

No. 296213
Calhoun Circuit Court
LC No. 2009-003157-FC

SYLVESTER BENNETT HUGULEY, a/k/a
SYLVESTER HUGULEY,

Defendant-Appellant.

Before: O'CONNELL, P.J., and K.F. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right from his jury conviction of first-degree criminal sexual conduct involving a person under 13 years of age, MCL 750.520b(1)(a), for which he was sentenced as a second habitual offender, MCL 769.10, to 25 to 40 years in prison. We affirm.

Defendant's conviction stems from the allegation that he put his finger in then-eight-year-old I.A.'s anus. I.A. was the son of Terri Jackson, who also had a then-seven-year-old child, and a four-year-old child with defendant. Defendant had been living with the family before the allegations came to light.

Defendant argues only that defense counsel rendered ineffective assistance by failing to object to evidence showing that defendant had hit, yelled at, and punished the children; that he threw toys at I.A.; that he had looked at I.A. while the child was in the shower; that he had lifted the four-year-old child by the leg and dropped her on her head; that he had threatened to kill the family if I.A. talked; and that he generally was not nice to the children. Defendant asserts that this evidence was not offered for any proper purpose and that it tended to show that, because he was capable of committing these other acts, he was capable of committing the charged act. Moreover, he argues that the evidence was not relevant and that, in any event, it was substantially more prejudicial than probative.

Defendant did not move for a new trial or an evidentiary hearing based on ineffective assistance of counsel. The issue is therefore preserved only to the extent that mistakes are apparent from the record. *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000).

“Generally, to establish ineffective assistance of counsel, a defendant must show that (1) counsel’s performance fell below an objective standard of reasonableness under professional norms and (2) there is a reasonable probability that, but for counsel’s errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable.” *People v Seals*, 285 Mich App 1, 16; 776 NW2d 314 (2009), citing *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). “Effective assistance of counsel is presumed and defendant bears the burden of proving otherwise.” *People v Petri*, 279 Mich App 407, 410; 760 NW2d 882 (2008). “Defense counsel is given wide discretion in matters of trial strategy because many calculated risks may be necessary in order to win difficult cases.” *People v Unger*, 278 Mich App 210, 242; 749 NW2d 272 (2008). “Declining to raise objections can often be consistent with sound trial strategy.” *Id.* at 253. “A failed strategy does not constitute deficient performance.” *Petri*, 279 Mich App at 412.

Counsel indicated in his opening statement that the allegations against defendant arose after defendant and Jackson went through a “bad break-up” that left Jackson angry with defendant. The implication was that the stories had been fabricated at Jackson’s behest. That the children disliked defendant because of his alleged maltreatment of them would be an additional reason that the children would fabricate the allegations of sexual abuse. The method by which counsel chose to establish this fact was a matter of trial strategy. We will not substitute our judgment for that of counsel regarding matters of trial strategy, nor will we assess counsel’s competence with the benefit of hindsight. *People v Payne*, 285 Mich App 181, 190; 774 NW2d 714 (2009). The fact that counsel’s defense strategy did not work does not compel the conclusion that counsel was ineffective.

Affirmed.

/s/ Peter D. O’Connell
/s/ Kristen Frank Kelly
/s/ Amy Ronayne Krause