

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ROY PARKMALLORY,

Defendant-Appellant.

---

UNPUBLISHED

November 23, 2021

No. 354571

Saginaw Circuit Court

LC No. 17-044076-FH

Before: RICK, P.J., and O'BRIEN and CAMERON, JJ.

PER CURIAM.

Defendant, Michael Parkmallory, was convicted by a jury of felon in possession of a firearm (felon-in-possession), MCL 750.224f(1), and possession of a firearm during the commission of a felony, second offense (felony-firearm), MCL 750.227b(1). Defendant was sentenced, as a third-offense habitual offender, MCL 769.11, to 12 to 120 months' imprisonment for the felon-in-possession conviction and to five years' imprisonment for the felony-firearm conviction. We affirm.

I. BACKGROUND

In June 2009, defendant pleaded guilty to receiving and concealing a stolen motor vehicle, MCL 750.535(7), and was sentenced to two years' probation. Defendant was also ordered to pay associated costs and fees in the amount of \$1,128. In May 2011, a bench warrant was issued for defendant's arrest as a result of his failure to pay the ordered costs and fees. After defendant pleaded guilty to violating his probation, the circuit court extended defendant's term of probation to July 2, 2014. In early September 2011, a second bench warrant was issued for defendant's arrest because he had been charged with carrying a concealed weapon, MCL 750.227, felon-in-possession, and felony-firearm. Defendant pleaded guilty to felony-firearm, and the remainder of the 2011 charges were dismissed. Defendant was sentenced to two years' imprisonment. Defendant pleaded guilty to violating his probation in relation to the 2009 conviction. On September 21, 2011, the circuit court sentenced defendant to 110 days in jail, with credit for 110 days already served. Defendant's probation was "closed [without] Improvement."

In 2017, defendant was charged with the crimes at issue in this appeal. These charges stemmed from defendant attempting to fire a gun into the air on December 30, 2016. Before trial began, defendant's lawyer stipulated that defendant was ineligible to possess a firearm as a result of his 2009 conviction. At the December 2017 trial, defense counsel argued that defendant never possessed the gun because he only touched it briefly when his girlfriend tossed it to him "in a panic" after she had fired the gun. The jury convicted defendant as charged.

Defendant appealed, arguing that defense counsel was ineffective for stipulating that defendant was ineligible to possess a firearm. This Court agreed that defense counsel was ineffective and reversed defendant's convictions. *People v Parkmallory*, 328 Mich App 289; 936 NW2d 877 (2019), vacated 505 Mich 866 (2019). The People appealed to our Supreme Court, which vacated this Court's opinion and remanded the matter to the trial court so that a *Ginther*<sup>1</sup> hearing could be held. *People v Parkmallory*, 505 Mich 866, 866; 935 NW2d 49 (2019). In doing so, our Supreme Court indicated as follows:

The record, as expanded by the Court of Appeals, demonstrates that there is an issue of fact whether the defendant would have been able to show, as to his 2009 felony conviction, that he had "paid all fines imposed for the violation," MCL 750.224f(1)(a), or that he "successfully completed all conditions of probation or parole imposed for the violation," MCL 750.224f(1)(c), due to the May 20, 2011 bench warrant for his "failure to pay the balance of his Court Assessments," including probation supervision fees. It was premature for the Court of Appeals to reverse the defendant's convictions when it is possible that the defendant was unable to demonstrate fulfillment of MCL 750.224f(1). [*Id.*]

At the *Ginther* hearing, defense counsel testified that he "considered" filing a motion to dismiss the criminal charges. However, defense counsel indicated that he "didn't give it too much thought because [he] knew that [defendant] had some unpaid balances" and that defendant "also didn't successfully complete probation[.]" Based on this, defense counsel "did not believe that [defendant] met the eligibility requirements for his restoring his gun rights." Defense counsel testified that his trial strategy was to argue that defendant did not possess the firearm. The prosecutor presented evidence that, as of July 2019, defendant owed \$1,318 in fines and costs in relation to the 2009 conviction and that defendant was discharged from probation without improvement because he pleaded guilty to a different crime in 2011, which resulted in a two year prison sentence.

The trial court denied defendant's motion for a new trial, finding that defendant would have been unable to satisfy all of the requirements under MCL 750.224f(1). This appeal followed.

## II. ASSISTANCE OF COUNSEL

Defendant argues that defense counsel was ineffective for stipulating that his prior conviction for receiving and concealing a stolen motor vehicle made him ineligible to possess a firearm and that he had not fulfilled the requirements to regain eligibility to possess a firearm.

---

<sup>1</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

According to defendant, “[h]ad counsel carefully examined [defendant’s] record, he should have moved to dismiss all of the charges against him.” We disagree.

#### A. STANDARDS OF REVIEW AND APPLICABLE AUTHORITY

Generally, “[t]he question whether defense counsel performed ineffectively is a mixed question of law and fact[.]” *People v Trakhtenberg*, 493 Mich 38, 47; 826 NW2d 136 (2012). If the trial court has held a *Ginther* hearing, the trial court must “find the facts, and then . . . decide whether those facts constitute a violation of the defendant’s constitutional right to effective assistance of counsel.” *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). “[T]his Court reviews for clear error the trial court’s findings of fact and reviews de novo questions of constitutional law.” *Trakhtenberg*, 493 Mich at 47. A finding is clearly erroneous if this Court “is left with a definite and firm conviction that the trial court made a mistake.” *People v Franklin*, 500 Mich 92, 100; 894 NW2d 561 (2017) (quotation marks and citation omitted). Regard should be given to the trial court’s opportunity to assess the credibility of the witnesses who appeared before it. MCR 2.613(C).

The Sixth Amendment of the United States Constitution guarantees that criminal defendants receive effective assistance of counsel. *Strickland v Washington*, 466 US 668, 687-688; 104 S Ct 2052; 80 L Ed 2d 674 (1984). To demonstrate ineffective assistance of counsel, “a defendant must show that (1) counsel’s performance fell below an objective standard of reasonableness and (2) but for counsel’s deficient performance, there is a reasonable probability that the outcome would have been different.” *Trakhtenberg*, 493 Mich at 51. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *People v Abcumby-Blair*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2020) (Docket No. 347369); slip op at 8 (quotation marks and citations omitted).

#### B. ANALYSIS

Resolution of the issue on appeal requires interpreting MCL 750.224f(1). “When interpreting statutes, our goal is to give effect to the intent of the Legislature by reviewing the plain language of the statute.” *People v Perkins*, 473 Mich 626, 630; 703 NW2d 448 (2005). MCL 750.224f(1)<sup>2</sup> provides, in relevant part, as follows:

[A] person convicted of a felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until the expiration of 3 years after all of the following circumstances exist:

- (a) The person has paid all fines imposed for the violation.
- (b) The person has served all terms of imprisonment imposed for the violation.

---

<sup>2</sup> The parties do not dispute that receiving and concealing a motor vehicle is a non-specified felony.

(c) The person has successfully completed all conditions of probation or parole imposed for the violation.

In this case, defense counsel testified at the *Ginther* hearing that he decided not to move to dismiss the criminal charges because, in relevant part, counsel possessed information that defendant had not paid all of the fines associated with his 2009 conviction. Based on this testimony and other record evidence, the trial court concluded in part that defendant had not “paid all fines imposed for the” 2009 conviction and was therefore not eligible to possess a firearm as of December 2016. This finding was not clearly erroneous.

Defendant was assessed a total of \$1,128 in costs and fees in relation to the 2009 conviction. Record evidence establishes that, as of July 10, 2019, defendant had paid just \$10. Defendant therefore had an outstanding balance of \$1,318, which included a penalty fee, at all relevant times. See MCL 600.4803(1). Although defendant acknowledges on appeal “that he did not pay all of the fines initially assessed against him” for the 2009 conviction, he implies that he was no longer required to pay these fees after he was discharged from probation. Specifically, defendant notes that the circuit court did not include costs and fees in the September 21, 2011 judgment of sentence.

We reject defendant’s argument that the failure to include those costs and fees in the September 21, 2011 judgment of sentence rendered the assessment in the original judgment ineffective or that defendant did not remain under the previously imposed court obligations to pay costs and fees assessed on the 2009 conviction. Importantly,

under MCL 769.1k(1), when a criminal defendant pleads guilty or *nolo contendere*, or is otherwise found guilty, courts may impose certain financial obligations at the time of sentencing. . . . Courts may impose these obligations even if the defendant is placed on probation, probation is revoked, or the defendant is discharged from probation. MCL 769.1k(3). *Moreover, the amounts imposed under MCL 769.1k may be collected at any time.* MCL 769.1k(5). [*People v Cunningham*, 496 Mich 145, 152; 852 NW2d 118 (2014) (emphasis added).]

Thus, defendant may not evade the monetary obligations that the circuit court previously imposed merely because he was discharged from probation.<sup>3</sup>

Additionally, the fact that the Michigan Department of Corrections (MDOC) has never removed funds from defendant’s prison account so that the funds could be applied to the costs and fees owed in relation to the 2009 conviction is not dispositive. Indeed, the MDOC is not permitted

---

<sup>3</sup> Defendant cites *People v Miller*, unpublished per curiam opinion of the Court of Appeals, issued March 4, 2010 (Docket No. 285752), to support that he was no longer obligated to pay the costs and fees assessed by the circuit court at his 2009 sentencing. Even if *Miller* was binding authority, we would conclude that the facts in *Miller* are distinguishable from the facts herein given that the trial court in *Miller* “cancelled” the fees and costs that the defendant owed upon termination of his probation. *Id.* at 6-8. The court in this case did not order that defendant was no longer required to pay the fees and costs owed in relation to the 2009 conviction.

to withdraw funds from a prisoner's account until ordered to do so. See MCL 769.11. The fact that the circuit court apparently did not enter an order requiring the MDOC to remove funds from defendant's account to satisfy the fines ordered in relation to the 2009 conviction does not establish that defendant was no longer required to pay the ordered costs and fees related to that case.

In sum, defendant did not satisfy all of the requirements under MCL 750.224f(1). Consequently, defendant cannot demonstrate that counsel was ineffective for stipulating that he was ineligible to possess a firearm based on his prior felony conviction. See *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010) (holding that failure to raise a meritless argument does not render counsel ineffective). Indeed, in the event that defense counsel had raised the meritless argument, the jury would have heard evidence that defendant pleaded guilty to violating his probation on two occasions and that defendant had been previously convicted of another gun-related crime. Given this holding, we need not consider defendant's argument that he successfully completed probation in relation to the 2009 conviction.

Affirmed.

/s/ Michelle M. Rick  
/s/ Colleen A. O'Brien  
/s/ Thomas C. Cameron