

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20060288-CA	
v.)		
)	F I L E D	
Robert Roy Baker,)	(February 8, 2007)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2007 UT App 35</td></tr></table>	2007 UT App 35
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Second District, Farmington Department, 041701882
The Honorable Rodney S. Page

Attorneys: Scott L. Wiggins, Salt Lake City, for Appellant
Mark L. Shurtleff and Christopher D. Ballard, Salt
Lake City, for Appellee

Before Judges Greenwood, Billings, and Orme.

PER CURIAM:

Robert Roy Baker appeals his sentence. Baker argues that he received ineffective assistance of counsel at sentencing. We affirm.

To demonstrate ineffective assistance of counsel, "a defendant must (i) identify specific acts or omissions by counsel that fall below the standard of reasonable professional assistance when considered at the time of the act or omission and under all the attendant circumstances, and (ii) demonstrate that counsel's error prejudiced the defendant." State v. Dunn, 850 P.2d 1201, 1225 (Utah 1993) (citing Strickland v. Washington, 466 U.S. 668, 690-91 (1984)). "Failure to satisfy either prong will result in our concluding that counsel's behavior was not ineffective." State v. Diaz, 2002 UT App 288, ¶38, 55 P.3d 1131.

Baker first argues he was provided ineffective assistance when his counsel failed to insist that a psychosexual evaluation be performed prior to sentencing. In State v. Thorkelson, 2004 UT App 9, 84 P.3d 854, this court held "it is within the

discretion of the [trial] court to determine whether it has sufficient information to impose sentence." Id. at ¶11 (citing State v. Brown, 771 P.2d 1067, 1067-68 (Utah 1989)).

"Furthermore, while a psychosexual evaluation may be useful in sentencing, it is not mandatory." Id. (citing State v. Gentlewind, 844 P.2d 372, 375 (Utah Ct. App. 1992) (recognizing that a court is not compelled to consider additional psychological information, even if relevant and helpful, if the court otherwise has sufficient information to impose sentence)). Here, Baker does not address what "relevant mitigating evidence" a psychosexual evaluation may have contained, and fails to discuss why counsel was ineffective when he did not "insist" that the court consider such information. Accordingly, Baker has failed to show that counsel was ineffective and has "failed to demonstrate that any purported prejudice [d]efendant suffered as a result of trial counsel's omissions was 'a demonstrable reality and not a speculative matter.'" State v. Person, 2006 UT App 288, ¶14, 140 P.3d 584 (quoting State v. Chacon, 962 P.2d 48, 50 (Utah 1998)).

Next, Baker argues that counsel was ineffective for failing to object to the prosecutor's statements that "thousands upon thousands of very graphic, very detailed pictures" were found in Baker's home. Baker's only argument in this regard is that "there is no evidence in the record supporting the State's allegations." To the contrary, various statements in Baker's presentence investigation report support the State's assertion. Indeed, when given an opportunity at sentencing, Baker himself did not contest this statement but instead attempted to explain the existence of the pictures. Thus, it appears that any objection to the prosecutor's statements would have been futile. "Failure to raise futile objections does not constitute ineffective assistance of counsel." State v. Kelley, 2000 UT 41, ¶26, 1 P.3d 546. In addition, Baker makes no showing that the absence of an objection prejudiced him. In its sentencing decision, the trial court made clear that the presence of pornography was a concern, without any reference to quantity. As noted above, Baker did not dispute the presence of pornography in his home. Thus, Baker's argument fails both prongs of the Strickland test. See Strickland v. Washington, 466 U.S. 668, 690-91 (1984).

Last, Baker argues that counsel was ineffective for failing to argue mitigating circumstances. However, it is clear that the trial court considered such circumstances during sentencing. Thus, Baker fails to show prejudice. See Person, 2006 UT App 288 at ¶13 (holding that a defendant must "identify specific acts or omissions that fell outside the wide range of professional assistance and illustrate that, absent those acts or

omissions, there is a reasonable probability of a more favorable result").

Accordingly, we affirm.

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge

Gregory K. Orme, Judge