

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20050738-CA
v.)	
)	F I L E D
Joey L. Silva,)	(September 21, 2006)
)	
Defendant and Appellant.)	2006 UT App 377

Second District, Farmington Department, 051700577
The Honorable Glen R. Dawson

Attorneys: Scott L. Wiggins, Salt Lake City, for Appellant
Mark L. Shurtleff and Karen A. Klucznik, Salt Lake
City, for Appellee

Before Judges Bench, Billings, and Thorne.

PER CURIAM:

Defendant Joey L. Silva appeals his conviction of aggravated assault. We affirm.

Defendant argues his counsel was ineffective for failing to object to purported evidence of other crimes, wrongs, or acts. "With respect to any ineffectiveness claim, a defendant must first demonstrate that counsel's performance was deficient, in that it fell below an objective standard of reasonable professional judgment. Second, the defendant must show that counsel's deficient performance was prejudicial--i.e., that it affected the outcome of the case." State v. Litherland, 2000 UT 76, ¶19, 12 P.3d 92 (citing Strickland v. Washington, 466 U.S. 668, 687-88 (1984)). When reviewing a defendant's claim of ineffective assistance, we "may skip to the second prong of the Strickland standard and determine that the ineffectiveness, if any, did not prejudice the trial's outcome." State v. Goddard, 871 P.2d 540, 545 (Utah 1994).

In this case, Defendant has failed to satisfy the second prong of the Strickland test. To prevail on this prong, a defendant "must demonstrate a reasonable probability that, but

for counsel's unprofessional errors, the result of the proceeding would have been different." State v. Strain, 885 P.2d 810, 814 (Utah Ct. App. 1994) (quotations and citation omitted). Defendant fails to "demonstrate that counsel's error prejudiced [him]." State v. Dunn, 850 P.2d 1201, 1225 (Utah 1993).

Defendant simply posits the blanket statement in his brief that "[b]ut for counsel's unprofessional error of failing to object to the evidence of [Defendant's] other crimes or wrong acts . . . , the result at trial would have been different." Defendant fails to demonstrate in any fashion why this is the case and "has not proffered any record evidence which undermines our confidence in [his] conviction." State v. Arquelles, 921 P.2d 439, 441 (Utah 1996). There is no showing that "but for the error, there is a reasonable probability that the verdict would have been more favorable to the [D]efendant." Dunn, 850 P.2d at 1225. Thus, Defendant's ineffectiveness claim fails "because he has not shown that he was prejudiced by trial counsel's performance." State v. Medina-Juarez, 2001 UT 79, ¶15, 34 P.3d 187.

Accordingly, the district court's judgment is affirmed.

Russell W. Bench,
Presiding Judge

Judith M. Billings, Judge

William A. Thorne Jr., Judge