

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAJOR ROSS,

Defendant-Appellant.

UNPUBLISHED

June 4, 1996

No. 170153

LC No. 91-108897

Before: Murphy, P.J., and Griffin and E.R. Post,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and felonious assault, MCL 750.82; MSA 28.277. The trial court sentenced him to imprisonment for two to ten years for the assault with intent to do great bodily harm conviction, two years for the felony-firearm conviction, and two to four years for the felonious assault conviction. The assault sentences were to run concurrently with each other, but consecutive to the felony-firearm sentence. Defendant appeals as of right. We affirm.

Defendant argues that there is insufficient evidence to sustain his assault with intent to commit great bodily harm less than murder conviction because the prosecution failed to disprove defendant's defense that he accidentally shot the victim. When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or offer with force or violence to do corporeal hurt to another (an assault), (2) coupled with an intent to do great bodily harm less than murder. *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995). Portions of the victim's testimony, as well as the testimony of Robert Cloud and Latrice Hawkins, established that defendant had the requisite intent and disproved defendant's claim that the shooting was accidental.

* Circuit judge, sitting on the Court of Appeals by assignment.

After reviewing the record, we conclude that a rational trier of fact could have found that the essential elements of assault with intent to do great bodily harm less than murder were proven beyond a reasonable doubt. Accordingly, defendant's argument is without merit.

Defendant next argues that his two-year felony-firearm sentence violates Const 1963, art 4, § 45, which provides that "[t]he legislature may provide for indeterminate sentences as punishment for crime and for the detention and release of persons imprisoned or detained under such sentences." According to defendant, Const 1963, art 4, § 45 precludes the imposition of a determinate sentence. We disagree. Const 1963, art 4, § 45 clearly permits the Legislature to establish indeterminate sentences, but does not prohibit the Legislature from establishing determinate sentences for certain offenses. Accordingly, we reject defendant's argument that his determinate two-year sentence for a first conviction of felony-firearm violates Const 1963, art 4, § 45.

Defendant finally argues that he received ineffective assistance of counsel because trial counsel failed to make numerous legal arguments and constitutional challenges. Because defendant did not move for a *Ginther* hearing, *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973), or a new trial, our review of defendant's claim is limited to mistakes apparent on the record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994). In *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994), our Supreme Court adopted the federal standard for determining whether a defendant has been denied effective assistance of counsel as set forth in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). To find that a defendant's right to effective assistance of counsel was so undermined that it justifies reversal of an otherwise valid conviction, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that the representation so prejudiced the defendant as to deprive him of a fair trial. *Pickens, supra*, 302-303. After reviewing the record, we conclude that defendant has failed to overcome the presumption that he received effective assistance of counsel and has failed to show that he was prejudiced by any alleged deficiencies in defense counsel's assistance. Thus, we reject defendant's argument that he received ineffective assistance of counsel.

Affirmed.

/s/ William B. Murphy
/s/ Richard Allen Griffin
/s/ Edward R. Post