

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD ALEXANDER SAWICKI,

Defendant-Appellant.

UNPUBLISHED

July 19, 1996

No. 185442

LC No. 94-133031

Before: Smolenski, P.J., and Holbrook, Jr., and F. D. Brouillette,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of simple assault, MCL 750.81; MSA 28.276. Defendant was sentenced to serve two years probation, the first sixty days to be served in the Oakland County Jail on work release. We affirm.

Defendant asserts that the trial court abused its discretion and assumed a prosecutorial role in questioning two witnesses, thus denying him a fair trial. We disagree. Defendant did not object to the trial court's conduct at trial. In the absence of objection, this Court may review the matter if manifest injustice results from the failure to review. *People v Collier*, 168 Mich App 687, 697; 425 NW2d 118 (1988).

A trial court must respect and observe the law, as well as uphold the integrity and impartiality of the judiciary. *People v Conyers*, 194 Mich App 395, 397-398; 487 NW2d 787 (1992). When questioning witnesses, the trial court must exercise caution and restraint to ensure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial. *People v Weathersby*, 204 Mich App 98, 109; 514 NW2d 493 (1994). Nevertheless, during a bench trial, a trial judge is afforded more discretion to question witnesses than during a jury trial. *In re Forfeiture of \$1,159,420*, 194 Mich App 134, 153; 486 NW2d 326 (1992); *People v Meatte*, 98 Mich App 74, 78; 296 NW2d 190 (1980). In this case, a review of the record as a whole does not reveal any judicial partiality. Accordingly, we find no manifest injustice and forgo any further review of the issue.

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

Defendant next argues that the trial court abused its discretion in imposing a disproportionate sentence. Defendant claims that, as a dentist with no prior criminal or spousal abuse history, the court sentenced him too harshly. We disagree. Defendant has failed to present any unusual circumstances which would suggest that the court abused its discretion. A lack of a criminal record does not constitute an unusual circumstance. *People v Piotrowski*, 211 Mich App 527, 533; 536 NW2d 293 (1995). In imposing defendant's sentence, the trial court considered all of the relevant criteria: the disciplining of the wrongdoer, the protection of society, the potential for reformation of the offender, and the deterrence of others from committing like offenses. *People v Hunter*, 176 Mich App 319, 320; 439 NW2d 334 (1989). The trial court did not abuse its discretion. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

Defendant further contends that the prosecution presented insufficient evidence to establish intent and reasonable fear of an immediate battery. We disagree. An assault requires: (1) an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery, and (2) an intent to injure or an intent to put the victim in reasonable fear or apprehension of an immediate battery. *People v Joeseype Johnson*, 407 Mich 196, 210; 284 NW2d 718 (1979). Viewing the evidence in the light most favorable to the prosecution, we conclude that sufficient evidence was presented to permit a rational trier of fact to conclude that the essential elements of the crime were established beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald E. Holbrook, Jr.
/s/ Francis D. Brouillette