

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALVIN B. HAYES,

Defendant-Appellant.

UNPUBLISHED

September 10, 1996

No. 196134

LC No. 94-133423-FC

ON REMAND

Before: Cavanagh, P.J., and Taylor and Markman, JJ.

PER CURIAM.

This case is before us¹ on remand from the Supreme Court. In its order, the Supreme Court instructed us to address defendant's claim of ineffective assistance of counsel. 451 Mich 920 (1996). We affirm.

Defendant contends that he was denied the effective assistance of counsel at trial. A defendant that claims that he has been denied the effective assistance of counsel must establish that (1) the performance of his counsel was below an objective standard of reasonableness under prevailing professional norms and (2) a reasonable probability exists that, in the absence of counsel's unprofessional errors, the outcome of the proceedings would have been different. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). A defendant must overcome a strong presumption that the assistance of his counsel was sound trial strategy, and he must show that but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994), cert den ___ US ___; 115 S Ct 923; 140 L Ed 2d 802 (1995).

Defendant asserts that he told defense counsel that he had spent five days smoking crack cocaine prior to the robbery, that he was on psychotropic medication, and that previously he had been hospitalized for mental health problems. Defendant claims that he asked defense counsel to arrange a mental health examination. Because defendant failed to move for a *Ginther*² hearing or a new trial based on ineffective assistance of counsel, this Court's review is limited to errors apparent on the record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994). We conclude that the

record before us does not support defendant's claims regarding his mental history. Moreover, contrary to defendant's assertion in his appellate brief, the sentencing transcript does not support his claim that he could not recall or understand his plea agreement.

Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *Stanaway, supra*. We conclude that defendant has not met his burden of proving that his trial counsel was ineffective.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Clifford W. Taylor

/s/ Stephen J. Markman

¹ Judge Markman has replaced Judge Martlew from the original panel.

² *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).