

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONDELL FALCONER,

Defendant-Appellant.

UNPUBLISHED

September 17, 1996

No. 173902

L.C.No. 93-010610

Before: Marilyn Kelly, P.J., and Gribbs and Collette,* JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316; MSA 28.548, and felony-firearm, MCL 750.227b; MSA 28.424(2). He was sentenced to consecutive terms of mandatory life and two years imprisonment. Defendant raises numerous issues on appeal, none of which have merit. We affirm.

Defendant raises several claims concerning prosecutorial misconduct. No objection was made below to any of the challenged remarks and this Court need not review this issue unless a curative instruction could not have eliminated the prejudicial effect, or if failure to review the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Our review of the record fails to reveal any improprieties by the prosecutor. There is no merit to defendant's claim that the prosecutor made references to the jury's civic duty, although defense counsel questioned jurors concerning civic duty during voir dire. The prosecutor's remark, during opening statement, that "life is cheap", was supported by the evidence that decedent was killed for a \$60.00 money order. Nor did the prosecutor vouch for the credibility of witnesses when he encouraged the jurors to give the witnesses whatever level of credibility they believed each witness deserved. We find no error.

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

Defendant argues that he was denied effective assistance of counsel. Defendant failed to move below for an evidentiary hearing as required by *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973). Thus, this Court's review is limited to deficiencies apparent in the record. *People v Armendarez*, 188 Mich App 61; 468 NW2d 893 (1991). To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that the alleged deficiencies were prejudicial. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984; *People v Tommolino*, 187 Mich App 14; 466 NW2d 315 (1991).

The record in this case does not support defendant's claim. We will not substitute our judgment for that of counsel regarding trial strategy, nor will we assess counsel's competence with the benefit of hindsight. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987). Defense counsel cross examined witnesses, highlighted the inconsistencies in their testimony, and attempted to cast doubt on their credibility. In short, defense counsel put forth the best defense he was able given the facts of this case. Counsel was not ineffective.

Defendant also argues that the trial court erred in admitting a hearsay statement. We do not agree. The statement was properly admitted as a party admission. MRE 810(d)(2)(A). *People v Kowalak (On Remand)*, 215 Mich App 554; 546 NW2d 681 (1996).

Defendant contends that the trial court's jury instruction was improper in several respects. We find no error. There is no merit to defendant's claim that the trial court should have sua sponte given a drug addict instruction. Contrary to defendant's assertion, there is no record evidence that the prosecution witnesses in this case were addict informants. The jury was properly cautioned to decide the credibility of each witness' testimony.

Defendant also argues that the trial court erred by explaining the concept of aiding and abetting because there was "no evidence in this case which would suggest that the defendant was in a common criminal enterprise" with the eyewitnesses. To the contrary, there was ample evidence that the witnesses knew that defendant had a gun and that he wanted to rob someone. Both witnesses testified that they had made other attempts to sell drugs before decedent came on the scene, and one witness had discussed with defendant the idea of grabbing decedent's money order. The trial court did not err in explaining to the jury that they could find an accused guilty of a crime even if they believed that other people were also involved in the crime.

Finally, the trial court did not err by instructing the jury that their verdict had to be unanimous. There is nothing in the record to suggest that the parties stipulated to a majority verdict in this case. *People v Johnson*, 101 Mich App 748; 300 NW2d 511 (1980). The jury instructions were not erroneous.

Affirmed.

/s/ Marilyn Kelly
/s/ Roman S. Gibbs
/s/ William E. Collette

