

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT BRADLEY LANCKTON,

Defendant-Appellant.

UNPUBLISHED

ON REMAND

October 4, 1996

No.194747

LC No.91-45449-FH

Before: Gribbs, P.J., and Wahls and Cavanagh, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), involving his minor son. Defendant subsequently pled guilty to habitual offender-second, MCL 769.10; MSA 28.1082, and was sentenced to a term of eighteen to forty years. On appeal by right, a panel of this Court reversed defendant's conviction because the jury verdict was received by a district, rather than a circuit, judge. Our Supreme Court reversed the judgment of this Court, and remanded the matter to us for consideration of issues not considered in our previous opinion. We find defendant's remaining issues to be without merit and affirm.

Defendant argues that he was denied effective assistance of counsel. There is no merit to this issue. 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 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). Counsel was not ineffective in this case.

Defendant also argues that the prosecutor improperly introduced certain rebuttal evidence. Because defendant presented evidence that he was a caring father, it was not improper to rebut defendant's claims by presenting evidence of defendant's disdain for the child. We find no manifest injustice. *People v Hoffman*, 205 Mich App 1, 20; 506 NW2d 1 (1994).

Defendant contends that he was denied a fair trial because of witness' references to defendant's previous incarceration. We do not agree. Nonresponsive volunteered answers to proper questions are generally not grounds for reversal. *People v Stengall*, 102 Mich App 147, 151-152; 301 NW2d 473 (1980). Further, we do not agree that the comments were deliberately injected. We find no manifest injustice. *People v Stimage*, 202 Mich App 28, 29; 507 NW2d 778 (1993).

Next, defendant argues that he is entitled to a new trial because a witness' testimony was reread to the jury. We do not agree that defendant was prejudiced by the trial judge's absence during the reading of the witness' testimony. Trial counsel was present in the courtroom and, although the circumstances may have been unusual, we find any error was harmless.

Finally, there is no merit to defendant's claim that the cumulative effect of the claimed errors requires reversal.

Affirmed.

/s/ Roman S. Gibbs

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh