

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VAN JENKINS,

Defendant-Appellant.

UNPUBLISHED
October 11, 1996

No. 187857
LC No. 95-071877-FH

Before: Markman, P.J., and McDonald and M. J. Matuzak*, JJ.

PER CURIAM.

Defendant appeals as of right his convictions for being an inmate in possession of a weapon, MCL 800.283(4); MSA 28.1623(4), and for being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. We vacate defendant's habitual offender conviction and sentence and remand.

I.

First, defendant claims that his habitual offender conviction should be vacated because he was not given an opportunity to have a jury decide the issue. We agree.

In 1994, the habitual offender act was amended to provide that the existence of a defendant's prior convictions is to be determined at sentencing by the trial court. MCL 769.13(5); MSA 28.1085(e). However, these amendments did not take effect until May 1, 1994 and applied only to offenses committed on or after that date. 1994 PA 110, § 2. Because defendant committed this offense on April 11, 1994, the existence of defendant's prior convictions was to have been established in accordance with the pre-amendment statute which grants a defendant a right to a jury trial. MCL 769.13; MSA 28.1035.

II.

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

Next, defendant claims he was denied effective assistance of counsel by his trial counsel's failure to request a guilty but mentally ill verdict. We disagree.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms and that there is a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *People v Stanaway*, 446 Mich 643; 521 NW2d 557 (1994), cert den sub nom *People v Caruso*, 513 US ___; 115 S Ct 923; 130 L Ed 2d 802 (1995).

In this case, defendant presented no evidence of mental illness. A review of the record does not support a finding that defendant is legally mentally ill under MCL 330.1400a; MSA 14.800(400a). The only evidence of defendant's mental state was the report and testimony of the psychologist who evaluated defendant at the Center for Forensic Psychiatry and found that defendant did not show signs of significant disorders of thought or mood. Therefore, there is no reasonable probability that even if defense counsel had requested such a verdict the result of the proceedings would have been different. Defendant was not denied effective assistance of counsel.

Defendant's inmate in possession of a weapon conviction is affirmed. Defendant's habitual offender conviction and sentence are vacated. We remand for habitual offender proceedings in accordance with MCL 769.13; MSA 28.1085 as it read prior to the 1994 amendments. We do not retain jurisdiction.

/s/ Stephen J. Markman
/s/ Gary R. McDonald
/s/ Michael J. Matuzak