

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MINH DUC NGUYEN,

Defendant-Appellant.

UNPUBLISHED
November 1, 1996

No. 181772
LC No. 94-000714-FC

Before: Wahls, P.J., and Cavanagh and J.F. Kowalski,* JJ.

PER CURIAM.

Defendant was convicted by a jury of three counts of armed robbery, MCL 750.529; MSA 28.797. He was sentenced to concurrent terms of six to twenty-five years. Defendant appeals of right, and we affirm.

Defendant was one of three perpetrators of a robbery of six persons who had gathered at a private residence to celebrate the Chinese New Year and to play poker.

Defendant first claims that the trial court erred in denying his motion for a new trial. This was based on the assertion that his trial counsel did not provide effective assistance because he waived the presence of a Vietnamese language interpreter on the third day of defendant's three-day trial. The interpreter had been present for the first two days of defendant's trial. A ruling on a motion for new trial is reviewed for abuse of discretion. MCR 6.431(B); *People v Burwick*, 133 Mich App 141, 146; 348 NW2d 307 (1984). To establish ineffective assistance of counsel, defendant must show "that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced defendant as to deprive him of a fair trial." *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). A trial court's determination of whether an interpreter is needed for a defendant is a matter within the trial court's discretion. *People v Atsilis*, 60 Mich App 738, 739 ; 231 NW2d 534 (1975).

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

At the hearing on the motion for new trial, the trial court stated that he remembered having interrogated defendant prior to the waiver on whether defendant needed an interpreter. While the record does not reflect that such an interrogation took place at that time, that such an interrogation might have taken place off the record was not disputed. The trial judge did interrogate defendant about his decision not to testify in his own defense. In addition, the trial judge observed defendant for the two days of his trial during which the interpreter was present. The preliminary examination record indicates that the interpreter likely was not even used when he was present. The totality of the circumstances indicates that the trial judge was mindful of the importance of a defendant having an interpreter when needed. There is no indication that the trial judge accepted waiver of the interpreter thinking that defendant was in need of the interpreter's services. There was no abuse of discretion in permitting counsel to waive the presence of the interpreter.

Further, defendant has not established that trial counsel rendered ineffective assistance in waiving the interpreter's presence. Defendant must show that any error on counsel's part was prejudicial. *Pickens, supra*. On the third day of trial, defense counsel cross-examined the investigating officer and the prosecutor reexamined him. No other testimony was taken. Because defendant fails to allege what might have transpired during that examination had the interpreter been present, he has not indicated how he might have been prejudiced by the waiver of the interpreter.

Because defendant has established no prejudice as a result of the waiver, the trial court did not err in denying a motion for new trial based on a claim of ineffective assistance of counsel.

Affirmed.

/s/ Myron H. Wahls
/s/ Mark J. Cavanagh
/s/ John F. Kowalski