

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE BARGINERE,

Defendant-Appellant.

UNPUBLISHED

April 4, 1997

No. 191149

Recorder's Court

LC Nos. 94-013257-FC;

94-013302-FC

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

In lower court no. 94-013257-FC, defendant pleaded guilty to armed robbery, MCL 750.529; MSA 28.797, breaking and entering, MCL 750.110; MSA 28.305, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). For those respective convictions, he was sentenced to eight to twenty years' imprisonment, five to ten years' imprisonment, and two years' consecutive imprisonment. In lower court no. 94-013302-FC, defendant pleaded guilty to first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to eight to twenty years' imprisonment for both the home invasion and the armed robbery convictions, plus two years' consecutive imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm defendant's convictions and sentences but remand for correction of the presentence investigation report. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. 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 there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). Since no there was no hearing on this claim, this Court's review is limited to mistakes apparent on the existing record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994).

We conclude that defendant was deprived of the effective assistance of counsel due to counsel's failure to request additional information in the presentence investigation report. The failure to do so could not have been a strategic decision, and had counsel requested the information, the court likely would have included it. Therefore, a remand for clarification of the report is appropriate. Specifically, the report is to indicate that the criminal sexual conduct charges against defendant were dismissed for lack of probable cause and the charges stemming from the break-in of the Holcomb residence were dismissed on the prosecutor's motion because there was no evidence to connect defendant to that incident.

Defendant's convictions and sentences are affirmed but the case is remanded for correction of the presentence investigation report. We do not retain jurisdiction.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar