

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE GRANISON,

Defendant-Appellant.

UNPUBLISHED

July 1, 1997

No. 192611

Oakland Circuit Court

LC No. 95-140486

Before: Saad, P.J., and Neff and Jansen, JJ.

PER CURIAM.

While incarcerated in the Oakland County Jail awaiting sentencing for a first degree murder conviction, defendant assaulted a guard. A jury convicted defendant of resisting or obstructing a police officer, MCL 750.479; MSA 28.747. Defendant now appeals by right. We affirm.

I

Defendant first asserts that certain statements made by the prosecution during its opening argument were improper. Because defendant failed to object to these statements at trial, the issue is unpreserved for appellate review absent a miscarriage of justice. *People v Rivera*, 216 Mich App 648, 651; 550 NW2d 593 (1996). After reviewing the record, we find that the comments were isolated and that the jury did not go outside the evidence presented. Thus, a miscarriage of justice will not occur by our failure to fully review the issue.

II

Defendant next argues that he was denied effective assistance of counsel. 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 Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994); *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994), cert den sub nom *Michigan v Caruso*, 513 US 1211; 115 S Ct 923;

130 L Ed2d 802 (1995). Because no hearing was held pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973), review of defendant's claim is limited to the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

Defendant first asserts that he was afforded ineffective assistance of counsel due to the failure to object to the prosecution's opening statements. However, defendant has failed to demonstrate that had counsel properly objected, the result would have been different. Consequently, defendant's argument must fail.

Defendant next asserts that he was denied effective assistance of counsel because no objection was made to defendant's wearing of prison garb during trial. We disagree. Counsel's failure to object to defendant being present during trial in prison attire does not necessarily constitute ineffective assistance of counsel. *People v Woods*, 32 Mich App 358, 359; 188 NW2d 649 (1971). The record reflects that defendant clearly understood his trial was beginning and never objected to his attire. Moreover, because a required element for assault of a prison employee is that defendant be legally incarcerated, the jury was aware that defendant was a prisoner and was therefore not prejudiced by defendant's prison attire. Thus, defendant has failed to demonstrate that had he not been in prison garb the jury would have come to a different result.

Defendant's final claim of ineffective assistance of counsel is based upon the failure of trial counsel to call witnesses and present a defense. The decision whether to call witnesses is a matter of trial strategy and will only constitute ineffective assistance of counsel when it deprives defendant of a substantial defense which would have affected the outcome of the proceeding. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Moreover, the decision to call or not call the defendant to testify is a matter of trial strategy. *People v Alderete*, 132 Mich App 351, 360; 347 NW2d 229 (1984).

Because defendant failed to sufficiently identify the witnesses and failed to indicate the substance of their potential testimony, we cannot say that defendant was denied a substantial defense. Furthermore, the record indicates that defendant was informed of his right to testify and chose not to do so. Also, it does not appear that defendant has overcome the presumption that the challenged action might be considered sound trial strategy. See *People v Tommolino*, 187 Mich App 14; 466 NW2d 315 (1991).

III

Defendant's final argument is that while the above errors may not individually constitute reversible error, their cumulative effect does. We disagree. Because none of the individual improprieties asserted by defendant constitute error, we find there was no cumulative error requiring reversal. See *People v Bahoda*, 448 Mich 261, 292 n 64; 531 NW2d 659 (1995).

Affirmed.

/s/ Henry William Saad

/s/ Janet T. Neff

/s/ Kathleen Jansen