

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ALAN LAROWE,

Defendant-Appellant.

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UNPUBLISHED

August 22, 1997

No. 190980

Recorder's Court

LC No. 95-000779-FH

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell\*, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction of third-degree criminal sexual conduct and resulting six- to fifteen-year sentence. We affirm.

Defendant claims that his trial counsel was ineffective in numerous respects. Most of these claims concern matters of trial strategy, such as witnesses to be called or questions to be posed on direct and cross-examination. Unsuccessful strategies are not tantamount to ineffective assistance of counsel. *People v Taft*, 70 Mich App 634, 637; 247 NW2d 319 (1976). For example, by stipulating to the report of the examining physician, who found no traces of semen on the victim, counsel was able to contradict one aspect of the victim's testimony without risking exposing the jury to damaging testimony about observed trauma to the victim during physical examination. While defendant speculates as to how different tactics or strategies might have benefited him, he has provided no record evidence of actual prejudice from any claimed dereliction, so even assuming *arguendo* that counsel's performance was below an objective standard of reasonableness, an assumption unjustified by the trial record, defendant has failed to establish the prejudice prerequisite to appellate relief on this issue. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Where the trial testimony indicated that defendant repeatedly banged the victim's head on the floor during the offense and forcibly sexually penetrated her, the trial court's scoring of offense variable two based on bodily injury to the victim is not so egregiously without a shred of factual support as to

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

establish a cognizable issue concerning sentence guideline scoring for appellate review purposes.  
*People v Mitchell*, 454 Mich 145; \_\_\_ NW2d \_\_\_ (1997).

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell