

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVIN JEROME HUGHES,

Defendant-Appellant.

UNPUBLISHED

November 21, 1997

No. 185874

Recorder's Court

LC No. 94-003709

Before: MacKenzie, P.J., and Sawyer and Neff, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to serve five to ten years' imprisonment for his assault with intent to murder conviction, to be served consecutively to two years' imprisonment for his felony-firearm conviction. He now appeals and we affirm.

Defendant argues that he was deprived of his right to a fair trial when the prosecutor improperly argued facts not in evidence. We disagree. We review allegedly improper conduct in context to determine whether it deprived the defendant of his right to a fair and impartial trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995); *People v Legrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994).

On appeal, defendant asserts that the prosecutor acted improperly, first, by conducting an in-court demonstration with defendant's weapon and, second, by referring to the outcome of the demonstration during closing argument. Upon review of the record, we find that the prosecutor's in-court demonstration was proper rebuttal evidence, see *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996), and, therefore, the prosecutor's statements during closing argument were also proper, see *People v Lee*, 212 Mich App 228, 255; 537 NW2d 233 (1994).

Defendant also argues that he was denied the effective assistance of counsel. We disagree. To establish a claim of ineffective assistance of counsel, the defendant must show: (1) that counsel's performance fell below an objective standard of reasonableness, i.e., that counsel's performance was

deficient, and (2) that the performance so seriously prejudiced the defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). Further, defendant must overcome the presumption that the challenged action might be considered sound trial strategy. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991). Upon review of the record from defendant's *Ginther*¹ hearing, we conclude that defendant has neither sustained his burden of proving that counsel made a serious error that affected the result of the trial nor has defendant overcome the presumption that counsel's actions were strategic.

Lastly, defendant argues that the cumulative effect of these alleged errors deprived him of his right to a fair trial. Again, we disagree. Having rejected each of the above arguments individually, it follows that the cumulative effect of the same errors also does not warrant reversal. *People v Sawyer*, 215 Mich App 183, 197; 545 NW2d 6 (1996).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ David H. Sawyer

/s/ Janet T. Neff

¹ *People v Ginther*, 390 Mich 436, 443-446; 212 NW2d 922 (1973).