

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HOWARD HAROLD JANES,

Defendant-Appellant.

UNPUBLISHED

January 9, 1998

No. 195370

Schoolcraft Circuit Court

LC No. 95-006047 FH

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

This appeal as of right follows defendant's conviction for manufacturing marijuana, MCL 333.7401(1) and (2)(c); MSA 14.15(7401)(1) and (2)(c), and the imposition of a three-month jail term. We affirm.

Defendant failed to make a testimonial record below in conjunction with a timely motion for new trial. Moreover, this Court denied defendant's motion for a remand for the purpose of creating such a record. Accordingly, our review of defendant's ineffective assistance of counsel claims is limited to the record. *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1994).

Absent record evidence demonstrating that defendant wished to testify and that counsel prevented defendant from testifying, defendant has failed to rebut the strong presumption that defendant's waiver of his right to testify reflects the exercise of sound trial strategy. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991); *People v Calhoun*, 178 Mich App 517, 524; 444 NW2d 232 (1989). Additionally, absent record identification of any of the alleged character witnesses and an offer of proof regarding the substance of the potential testimony of these witnesses, defendant has failed to demonstrate that counsel deprived defendant of a substantial defense and, hence, rendered ineffective assistance of counsel. *People v Hyland*, 212 Mich App 701, 710-711; 538 NW2d 465 (1995), vacated in part on other grounds 453 Mich 900 (1996). Defendant also failed to establish his claim of ineffective assistance of counsel where defendant has not shown that defense counsel failed to fully investigate the evidence gathered against him and has failed to explain with any degree of specificity how he was prejudiced by any alleged deficiency in counsel's performance.

People v Stanaway, 446 Mich 643, 687-688; 521 NW2d 557 (1994); *People v Messenger*, 221 Mich 171, 181; ___ NW2d ___ (1997). Likewise, defendant has failed to show that defense counsel rendered ineffective assistance by failing to request an independent psychological evaluation of defendant where there is no evidence in the record to call into question defendant's competency to stand trial and where defendant has failed to specify how he was prejudiced by this failure. *Stanaway, supra; Messenger, supra*.

We decline to remand the instant case for an evidentiary hearing where defendant failed to seek leave to appeal our denial of his motion for remand, MCR 7.302(C)(6); *People v Hernandez*, 443 Mich 1, 6; 503 NW2d 629 (1993), and where defendant has failed to present a colorable claim of ineffective assistance of counsel.

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly