

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM FRANK TRAPANI, JR.,

Defendant-Appellant.

---

UNPUBLISHED

May 12, 1998

No. 198999

Oakland Circuit Court

LC No. 90-103396 FH

Before: Holbrook, Jr., P.J., and Gribbs and R.J. Danhof,\* JJ.

PER CURIAM.

Following a probation revocation hearing, defendant's lifetime probation sentence was revoked for his 1990 convictions of delivery of less than 50 grams of a controlled substance, in violation of MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and possession of a controlled substance under 25 grams in violation of MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). He was sentenced to serve one to twenty years in prison. He appeals as of right and we affirm.

On appeal, defendant claims that he was denied the effective assistance of counsel at his probation revocation hearing. To establish that the right to effective assistance of counsel was so undermined that it justifies reversal of an otherwise valid conviction, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that the representation so prejudiced the defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). Defense counsel's performance must be evaluated against an objective standard of reasonableness without the benefit of hindsight. *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995). Furthermore, effective assistance of counsel is presumed and a defendant bears a heavy burden of proving otherwise. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

First, defendant argues that his counsel erred by failing to raise a hearsay objection to the admission of certified copies of judgments of conviction to prove that defendant violated the terms of his probation. However, pursuant to MCL 771.4; MSA 28.1134, hearings involving probation revocation

---

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

are to be “summary and informal and not subject to the rules of evidence or

of pleadings applicable to criminal trials.” *People v Morgan*, 85 Mich App 353, 356; 271 NW2d 233 (1978). Accordingly, defense counsel was not ineffective for failing to raise an hearsay objection, where such objection would have been futile. See *People v Rodriguez*, 212 Mich App 351, 356; 538 NW2d 42 (1995).

Next, defendant argues that defense counsel was ineffective in failing to obtain trial transcripts from the misdemeanor convictions that were used to establish a violation of defendant’s probation. According to defendant, a review of those transcripts would have revealed a violation of his Sixth Amendment right to counsel. We find no merit to this argument.

An alleged violation of a defendant’s Sixth Amendment right to counsel constitutes a jurisdictional defect that may be challenged collaterally. *People v Carpentier*, 446 Mich 19, 29-30; 521 NW2d 195 (1994); *Custis v United States*, 511 US 485; 114 S Ct 1732; 128 L Ed 2d 517 (1994). A defendant who collaterally challenges an antecedent conviction as violative of the defendant’s right to counsel bears the initial burden of establishing that the conviction was obtained without counsel or without a valid waiver of counsel. *Carpentier, supra* at 31. Here, defendant has submitted copies of the judgments of sentence entered for the two misdemeanor convictions, each of which expressly indicates that defendant “was advised of the right to counsel and appointed counsel and knowingly, intelligently, and voluntarily waived that right.” Defendant alleges in his appeal brief, however, that on the day of trial he told the district judge that he wanted an attorney but could not afford one. Defendant further alleges that the district judge clearly erred in finding that defendant was not in fact indigent. See MCR 6.005. Even assuming that defendant’s claim has not been abandoned by his failure to submit a copy of the transcript of the indigency hearing to this Court, we would nonetheless conclude that a challenge to the factual basis for a district court’s finding that defendant was not indigent does not rise to the level of a constitutional violation. Thus, defendant’s collateral challenge would fail, and, consequently, we conclude that he was not denied effective assistance of counsel where defense counsel failed to assert the futile collateral challenge at the probation revocation hearing.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Roman S. Gribbs

/s/ Robert J. Danhof