

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IRA LEE COLLIES,

Defendant-Appellant.

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UNPUBLISHED

March 22, 2005

No. 251872

Wayne Circuit Court

LC No. 03-005654-01

Before: Murray, P.J., and Markey and O’Connell, JJ.

MEMORANDUM.

Defendant appeals as of right from his convictions of felon in possession of a firearm, MCL 750.224f(1), and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The police executed a search warrant at a motorcycle club and found defendant sitting on a mattress in a bedroom. When defendant stood up, an officer observed a pistol lying on the bed in the area where defendant had been sitting. Defendant testified that he was asleep when the police arrived and denied that he possessed the gun or knew that it was there.

A person convicted of a felony may not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in Michigan. MCL 750.224f(1). The elements of felony-firearm are: (1) the possession of a firearm; (2) during the commission of, or the attempt to commit, a felony. MCL 750.227b. A person has “possession” of a firearm if the firearm is accessible and available during the commission of or the attempt to commit a felony. *People v Williams (After Remand)*, 198 Mich App 537, 541; 499 NW2d 404 (1993).

Defendant argues that trial counsel rendered ineffective assistance by failing to arrange a polygraph examination for use in support of a pre-trial motion to suppress the gun. We disagree. When claiming ineffective assistance of counsel, a defendant bears the heavy burden of demonstrating that his attorney’s errors were so serious that the attorney was not acting as “counsel” for constitutional purposes. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). The defendant must show a reasonable probability that but for counsel’s error, the result of the proceedings would have been different. *Id.* at 600. Here, defendant does not contend that the search warrant was invalid. Therefore, even a successful polygraph examination would not have led to *suppression* of the gun, because it would not have impeached the search warrant, it

would only have generally bolstered defendant's veracity. See *People v McKinney*, 137 Mich App 110; 357 NW2d 825 (1984). This evidence would not have assisted defendant at trial, because polygraph examinations are not admissible. *People v Barbara*, 400 Mich 352; 255 NW2d 171 (1977). Therefore, defendant fails to demonstrate how the proposed polygraph examination would have altered the outcome of any of the trial proceedings, so he has not overcome the presumption that his trial counsel rendered effective assistance. *People v Rocky*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell