

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
July 19, 2011

v

GARRY ALAN COLLIER,
Defendant-Appellant.

No. 297803
Kent Circuit Court
LC No. 09-006896-FH

Before: SAWYER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of breaking and entering a vehicle with damage to the vehicle, MCL 750.356a(3). Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to 2-1/2 to 25 years' imprisonment. He appeals as of right. We affirm.

Defendant argues that he was denied effective assistance of counsel because defense counsel elicited damaging testimony from a defense witness, which implied that defendant had a criminal background. Because defendant failed to properly preserve his claim of ineffective assistance of counsel, our review is limited to errors apparent on the record. *People v Seals*, 285 Mich App 1, 19-20; 776 NW2d 314 (2009).

To establish a claim of ineffective assistance of counsel, the defendant must prove that the counsel's representation fell below an objective standard of reasonableness and was so prejudicial it denied the defendant a fair trial. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). To prove the counsel's performance was deficient, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). The defendant demonstrates prejudice by showing the "existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *Id.*

In this case, defendant fails to prove defense counsel's representation was deficient because he cannot overcome the presumption that defense counsel's performance constituted sound trial strategy. See *Carbin*, 463 Mich at 600. Counsel's decision to question the counselor who met with defendant as part of a program for offenders being released from prison shortly before he was detained by the police was a matter of trial strategy. See *People v Rockey*, 237

Mich App 74, 76; 601 NW2d 887 (1999). “Even the intentional introduction by defense counsel of a prior criminal record does not constitute a serious mistake of counsel depriving defendant of a fair trial or of effective assistance of counsel where the record was introduced as a trial tactic.” *People v Armstrong*, 100 Mich App 423, 426; 298 NW2d 752 (1980). Defense counsel had great discretion regarding trial strategy, and this Court will not second guess counsel even where the strategy chosen did not work. *Pickens*, 446 Mich at 330; *Rockey*, 237 Mich App at 76-77. Furthermore, defendant fails to prove that defense counsel’s representation was prejudicial to him. Defendant puts forth no arguments that “but for counsel’s error, the result of the proceedings would have been different.” *Carbin*, 463 Mich at 600. Accordingly, defendant was not denied effective assistance of counsel.

Affirmed.

/s/ David H. Sawyer
/s/ William C. Whitbeck
/s/ Donald S. Owens