

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMUEL EUGENE CALHOUN,

Defendant-Appellant.

---

UNPUBLISHED

October 21, 2003

No. 237287

Berrien Circuit Court

LC No. 2001-410703-FC

Before: Griffin, P.J., and Neff and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree criminal sexual conduct, MCL 750.520b(1)(b), for engaging in sexual intercourse with his fourteen-year-old stepdaughter. He appeals as of right. We affirm.

I

The victim testified that defendant began engaging in sexual touching and other sexual acts with her when she was in the second grade and living with her mother and defendant in Chicago. When the victim was in the sixth or seventh grade, defendant started having penile/vaginal intercourse with her. In May 2000, when the victim and her family were living with defendant in Niles, Michigan, the victim became pregnant. She testified that she never engaged in sexual intercourse with anyone else and that defendant impregnated her. In October 2000, the victim moved to a pregnancy home in Indiana. Shortly before the baby's birth, the victim informed her mother that defendant was responsible for the pregnancy. Before that time, she had maintained that another person was responsible, because defendant had instructed her to do so. The police were notified about defendant's actions shortly before the baby was delivered on February 12, 2001.

When the baby was born, fetal blood was drawn and given to a detective from the Niles Police Department. Similarly, the victim's blood was drawn and given to the detective. The detective packaged the blood and sent it to the state police laboratory for DNA analysis. Defendant was later arrested and his blood was drawn pursuant to a search warrant. It was also sent for DNA analysis. DNA analysis revealed that the odds in favor of defendant being the father of the baby were 3,035,319,000 to 1. The percentage of the population that was excluded from paternity was 99.99997 percent.

Defendant defended the charge by testifying that he never engaged in sexual intercourse with the victim. He further indicated that he previously injured a testicle on a bicycle. While he admitted that he had a low sperm count, he claimed that he could not father children at all. He denied that the victim's eleven-year-old brother was his child. He also offered testimony that the victim's allegations were prompted by the victim's mother as part of a plot to obtain his property. The jury convicted defendant as charged.

## II

On appeal, defendant challenges the effectiveness of his counsel on numerous grounds. Our review of defendant's ineffective assistance of counsel claim is limited to errors apparent on the record, because no *Ginther*<sup>1</sup> hearing was held below. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that, but for counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. *Strickland v Washington*, 446 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). A defendant must affirmatively demonstrate that counsel's performance was objectively unreasonable and prejudicial to him. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994).

## A

Defendant first argues that his counsel failed to properly prepare for trial. This claim is based on defendant's interpretation of certain events that occurred before trial. Specifically, defense counsel moved to adjourn trial on July 17, 2001. The motion was denied at a hearing on July 18, 2001. On the following day, defense counsel filed four motions, three of which were based on information that defendant provided on July 18, 2001, including that he previously treated with two doctors in Illinois, that he believed these doctors could support his position that he was unable to father a child, and that he was surprised by the DNA results, which were produced by the prosecution approximately two weeks earlier. Defendant moved to require the prosecutor to obtain interstate subpoenas for the Illinois doctors, to order funds for, and permit defendant to obtain, a medical examination to support his claim that he could not father children, and to order a forensic examination. The fourth motion was to determine which of two pending first-degree criminal sexual assault cases against defendant would be tried first. In the latter motion, defense counsel pointed out that both cases were set for trial on the same day. Because the cases were not formally consolidated, counsel argued that it would be prejudicial to try the cases together and that defendant was entitled to know which case would be tried first. On July 24, 2001, the prosecutor's office clarified that the instant case would proceed to trial first. The trial court ultimately took responsibility for scheduling both cases on the same day.

The trial court denied the other three motions. With respect to the medical examination, the record revealed that defendant first raised issues about his ability to father children only after

---

<sup>1</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

receiving the DNA results. Defendant failed to make an offer of proof or otherwise factually support his position that a medical examination would lead to probative evidence. He relied on his bare allegations in this regard. The trial court, noting that defendant had known for several months that the victim had claimed that he was her baby's father, denied the motion as untimely. The motion for a forensic examination to determine defendant's competency was based solely on defense counsel's subjective observations of defendant on July 18, 2001, and was also denied. At the hearing on the motion, the trial court noted that defendant had been charged with two other crimes since May 2000, and that no motion with respect to his competency had been raised in those cases. Finally, the trial court denied defendant's motion to order the prosecutor to obtain the interstate subpoenas. It did so after the prosecutor reiterated that no offer of proof or other information about the doctors was provided by defendant.

Defendant relies on the late filing of the motions, and the trial court's denial of the motions, to argue that his counsel failed to properly prepare. He suggests that if counsel was better prepared, the motions would have been timely filed and may have been granted. We disagree. The record is devoid of information concerning the extent of counsel's preparation, the type of preparation, the total number of oral or written communications between counsel and defendant before trial, and the quality of those contacts. Moreover, defense counsel could not have filed the motions at an earlier time because the record indicates that he was not aware of defendant's alleged medical condition before defendant revealed it to him on July 18, 2001, and it was not until that date that defense counsel observed the behavior that led to the motion for a forensic examination. More importantly, the record does not factually support that defendant was actually incompetent to stand trial or that a forensic examination was warranted. Similarly, the record does not factually support defendant's position that a medical examination or the testimony of the two out-of-state physicians would have supported defendant's theory that he was unable to father children. Defendant's arguments that the motions would have been granted if timely filed and that a different outcome would have resulted are based solely on defendant's unsupported assertions. Moreover, the record does not support defendant's allegation that counsel would have been better prepared if he had clarified earlier that this case would proceed on the scheduled trial date. Defendant has failed to demonstrate that counsel's trial preparation was objectively unreasonable or that, but for any alleged ill-preparation, there was a reasonable probability that the outcome of trial would have been different. *Stanaway, supra*.

As further support for our decision on this issue, we note that the record reveals that defense counsel was not ill-prepared or without strategy as defendant alleges on appeal. Counsel questioned the victim's credibility and that of her mother. He offered evidence to support the defense theory that the accusations were part of a plot by the victim's mother to obtain defendant's property. He also presented evidence disputing that the victim's mother was married to defendant as she claimed at trial. Additionally, defense counsel questioned the validity of the DNA statistics and argued that the DNA results were not infallible. He further argued that there was a chain of evidence problem with respect to the blood used in the DNA analysis. Counsel's assistance is not rendered ineffective because the chosen strategy ultimately fails. See *People v Kevorkian*, 248 Mich App 373, 414-415; 639 NW2d 291 (2001).

Defendant also argues that defense counsel's oral motion to withdraw immediately before trial began supports his theory that counsel was not prepared. Appointed counsel originally moved for an adjournment of trial on July 17, 2001, indicating that defendant's family had

decided to retain counsel for defendant. He did not claim that there was any breakdown in the attorney-client relationship. At trial, after all of the other motions designed to cause delay were denied, defendant's appointed counsel orally moved to withdraw, making a nonspecific claim that there was a breakdown of the attorney-client relationship. If counsel was allowed to withdraw and trial was adjourned, defendant's family would have had the opportunity to retain the attorney they wanted to hire. The circumstances surrounding the motion suggest that it was made as a crafty attempt by counsel to secure an adjournment to please defendant after the other delaying tactics were unsuccessful. It does not support defendant's claim of lack of preparation.

## B

Defendant next argues that he was prejudiced and denied a fair trial by alleged, outcome-determinative mistakes by counsel. Defendant specifically complains about the manner in which counsel questioned witnesses, the collateral issues that counsel allowed to be introduced, counsel's failure to object to certain testimony about defendant's employment, counsel's failure to object or preclude information about defendant's other crimes, and counsel's decision to raise issues about a personal protection order that the victim's mother secured against defendant's mother. Some of the challenged actions are improperly characterized or misunderstood by defendant on appeal. More importantly, however, defendant has not met his burden of proof with respect to any of these claims. While he lists the challenged conduct and cites numerous cases discussing the issue of ineffective assistance of counsel, he fails to explain or rationalize how any of the challenged actions affected the outcome of trial. He generally concludes that the "record in the instant case is clear that counsel made serious mistakes that were outcome determinative." "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Further, the challenged actions generally involve matters of trial strategy, which this Court will not second-guess. *People v Knapp*, 244 Mich App 361, 386 n 7; 624 NW2d 227 (2001). "[E]ven if defense counsel was ultimately mistaken, this Court will not assess counsel's competence with the benefit of hindsight." *Id.*, quoting *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). More importantly, given the victim's testimony and the overwhelming DNA evidence, we cannot conclude that any of the challenged actions affected the outcome of the case. Thus, defendant has not sustained his burden with respect to his claim of ineffective assistance of counsel.

## III

Next, defendant appeals the trial court's denial of counsel's oral motion to withdraw on the morning of trial. When reviewing a trial court's decision to deny a defense counsel's motion to withdraw and to grant a continuance to secure other counsel, several factors must be considered:

(1) whether the defendant is asserting a constitutional right, (2) whether the defendant has a legitimate reason for asserting the right, such as a bona fide dispute with his attorney, (3) whether the defendant was negligent in asserting his right, (4) whether the defendant is merely attempting to delay trial, and (5) whether the defendant demonstrated prejudice resulting from the trial court's decision. [*People v Echavarria*, 233 Mich App 356, 369; 592 NW2d 737 (1999).]

The trial court's decision will not be disturbed absent an abuse of discretion. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001).

An indigent defendant is guaranteed the right to counsel; however, he is not entitled to have the attorney of his choice appointed simply by requesting that the attorney originally appointed be replaced. Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic. [*Id.*, citing *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991).]

After arguing the pretrial motions and one additional oral motion, defense counsel stated:

Second, and more importantly, your Honor, I talked to my client this morning and basically he indicated to me that our conversation was going nowhere, that we didn't want it to break down into a full argument type thing, but it's my opinion that the lawyer/client - - or the lawyer/client relationship is totally destroyed in this case. And I'm not prepared to represent my client in this situation where we have no relationship anymore.

The trial court questioned defendant about why there was no longer a relationship. Defendant answered, "I don't know." He complained that he could not raise certain issues with counsel in a timely manner because he was not in contact with counsel. He subsequently complained about appointed counsel's representation in an unrelated matter and about a bond issue that he had discussed with counsel four months earlier. The trial court indicated that it was responsible for the bond and that it had listened to counsel's argument on the matter. Defendant then conceded that he was not blaming counsel for the bond, but he generally indicated that the representation was not "up to his expectations." He felt that counsel was not acting in his best interests. In support, he stated that he believed counsel filed the pretrial motions in a tardy manner. Defendant further expressed a belief that no one, including the court, was giving him the presumption of innocence. Like defendant, defense counsel also failed to articulate any concrete reason to support the motion to withdraw. The trial court denied the motion, noting that there are many times when an attorney and his client do not see "eye to eye." Contrary to defendant's claim, we conclude that the trial court thoughtfully considered the issue, asked questions, and did not abuse its discretion in denying the motion.

While we accept that defendant was asserting his constitutional right to effective counsel when he joined in appointed counsel's motion to withdraw, the record does not support the existence of a legitimate reason for withdrawal. Neither defendant nor counsel articulated a difference of opinion with regard to a fundamental trial tactic. The stated reasons in support of the motion were vague. A defendant's vague allegation that he lacks confidence in trial counsel is insufficient to support a claim that substitution is warranted. *Traylor, supra* at 463. Likewise, general unhappiness with representation is insufficient. See, e.g., *Traylor, supra*, wherein this Court noted that a defendant's filing of a grievance against his counsel is insufficient alone to warrant new counsel. Here, there was no bona fide dispute that supported a finding of good cause to allow appointed counsel to withdraw and permit a continuance while defendant retained other counsel. *Echavarria, supra* at 369.

We acknowledge that defendant specifically articulated displeasure with the late filing of motions. As previously discussed, however, he has not shown that he was prejudiced because counsel filed the motions eight days before trial. *Traylor, supra*. Nor has he demonstrated that the motions were meritorious and would have been granted if timely filed. Similarly, defendant's general allegation that there was a lack of communication was insufficient to justify the motion to withdraw and grant a continuance. The record supports that, at a minimum, defense counsel met with defendant four months before trial and engaged in discussions. As soon as he received the DNA results, he forwarded them to defendant. Shortly thereafter, on July 18, 2001, defense counsel spent a "significant" amount of time with defendant at the Berrien County Jail. He had obviously spoken with defendant or his family before that time because he filed the motion to adjourn on July 17, 2001. There was no evidence that defendant attempted to communicate with defense counsel at any time and was ignored, or that additional communication was necessary or would have been fruitful before the DNA results were received. In sum, there was no showing that the communications were insufficient or that a lack of communication resulted in a bona fide dispute between counsel and defendant. Accordingly, there was no good cause for withdrawal.

Finally, we also conclude that defendant has not demonstrated that he was prejudiced by the trial court's denial of counsel's motion to withdraw. Counsel provided a defense, cross-examined witnesses, raised doubt about the credibility of the victim's mother, raised issues with respect to the victim's credibility, questioned the statistical reliability of the DNA paternity results, and even managed to have the trial court strike an habitual offender notice on a procedural ground. Furthermore, as previously noted, the motion to withdraw appears to have been made as an attempt by counsel to satisfy the desire of defendant and his family to retain counsel of their own choosing, a decision that was made by them only after receiving the DNA results. The denial of the motion was not an abuse of discretion.

#### IV

Defendant further argues that the trial court failed to properly exercise its discretion with respect to the pretrial motions because it did not deny them on the merits, but because they were untimely. Defendant argues that the pretrial motions were motions for a continuance to obtain a medical examination, to obtain a forensic examination, and to subpoena certain witnesses. He argues that, as such, they were improperly denied because he met the criteria to obtain a continuance. *Echavarría, supra*. Specifically, defendant contends that he was asserting his constitutional right to present a defense or avoid trial, if found to be incompetent. He also contends that he had legitimate reasons for seeking a continuance, was not negligent in seeking it, and was prejudiced by the trial court's decision to deny it. We disagree. Defendant was negligent in failing to raise these issues earlier, and circumstances suggested that the motions were made to delay trial. Defendant was aware that he had been accused of fathering the victim's baby months before he brought the medical matter to his attorney's attention. Moreover, he has failed to offer factual support for his position that a medical examination, a forensic examination, or the production of out-of-state witnesses would have assisted his case in any way. He relies only on his self-serving statements in this regard. Further, nothing in the record otherwise supports defendant's claim that a forensic examination was warranted. The motion was based on counsel's subjective observations only. For these reasons, we conclude that the trial court did not abuse its discretion when it denied the motions.

Defendant next challenges several portions of the prosecutor's closing argument. Defendant did not object to the challenged remarks at trial. Accordingly, these unpreserved issues are reviewed for plain error. *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001), citing *People v Carines*, 460 Mich 750, 752-753, 763; 597 NW2d 130 (1999).

To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. "It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice." Finally, once a defendant satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings' independent of the defendant's innocence." [*Id.* at 763 (citations omitted).]

Error requiring reversal will not be found if the prejudicial effect of the prosecutor's improper argument could have been cured by a timely instruction. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

Defendant first argues that the prosecutor improperly personalized the crime and sympathized with the victim. A prosecutor may not appeal to the jury to sympathize with the victim. *People v Abraham*, 256 Mich App 265, 273; 662 NW2d 836 (2003). Such appeals constitute improper argument. *Watson, supra* at 591. The prosecutor concedes that a portion of the challenged argument constituted an improper plea for sympathy. The improper argument does not require reversal, however, because a curative instruction could have cured any prejudice, and the jury was instructed both that the arguments of the attorneys are not evidence to be considered, and that their decision must not be influenced by sympathy. Moreover, in light of the overwhelming physical evidence and testimony against defendant, he cannot demonstrate that the improper argument was outcome determinative. *Carines, supra*.

Defendant also claims that a portion of the prosecutor's argument improperly appealed to the jury's civic duty to convict. An improper civic duty argument plays on the fears or prejudices of the jury, *People v Cooper*, 236 Mich App 643, 651; 601 NW2d 409 (1999), injects issues broader than the defendant's guilt or innocence, or calls on the jury to suspend their powers of judgment, *People v Truong (After Remand)*, 218 Mich App 325, 340; 553 NW2d 692 (1996). The prosecutor concluded her closing argument by reminding the jurors about their duties and asking them to return a verdict of guilty. The prosecutor argued that the jury had a chance to "do" justice or "see" that justice was done. While we agree that this argument bordered on an impermissible civic-duty argument, it was innocuous and could have been cured by an instruction if one was requested. *People v Crawford*, 187 Mich App 344, 354; 467 NW2d 818 (1991). In *Crawford*, the prosecutor asked the jury to return a verdict of guilty "because justice demands it, because it is the right thing to do." *Id.* No error requiring reversal was found. Similarly, we find no error requiring reversal in this case.

Defendant also challenges several statements made by the prosecutor during her rebuttal argument. A prosecutor's comments are to be considered in light of defense counsel's arguments. *People v Vaughn*, 200 Mich App 32, 39; 504 NW2d 2 (1993).

Generally, “[p]rosecutors are accorded great latitude regarding their arguments and conduct.” They are “free to argue the evidence and all reasonable inferences from the evidence as it relates to [their] theory of the case.” [*People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (citations omitted).]

A prosecutor is not required to state inferences or conclusions in the blandest possible terms. *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996); *People v Ullah*, 216 Mich App 669, 678-679; 550 NW2d 568 (1996).

In closing, defense counsel argued that the victim should not be believed. He also argued that the victim's mother should not be believed and that she was trying to take defendant's property away from him in “whatever way she could.” In rebuttal, the prosecutor addressed defendant's general theory that he was truthful while the victim was not. In doing so, she argued that defendant's demeanor on the witness stand and the “flat-out lies” he admitted telling demonstrated, in her opinion, that he was a practiced liar. A prosecutor may not vouch for a defendant's guilt. *People v Weatherspoon*, 171 Mich App 549, 558; 431 NW2d 75 (1988). A prosecutor may, however, argue from the facts that the defendant is not worthy of belief. *Id.*; *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). A prosecutor is permitted to characterize defendant as a “liar” if the comment is based on the evidence produced at trial. *Id.* In addition, the prosecutor's use of the phrase “I believe,” does not automatically constitute improper vouching. *People v Reed*, 449 Mich 375, 398-399; 535 NW2d 496 (1995). The challenged comments must be evaluated in light of the evidence, and the crucial inquiry is whether the prosecutor was trying to vouch for the defendant's guilt. *Id.* Here, the prosecutor's comments were responsive to defense counsel's closing argument, and the prosecutor's characterization of defendant as a liar was based on his testimony and his demeanor on the witness stand. The jurors were instructed that they could consider how witnesses looked and acted when determining whether the witnesses were credible. Under the circumstances, we disagree that the prosecutor's comments constituted improper vouching. We further conclude that, even if they could be deemed impermissible, defendant has not demonstrated that his substantial rights were affected. *Aldrich, supra*; *Carines, supra*.

In rebuttal, the prosecutor also argued that defendant had many reasons to lie while the victim did not. She compared the reasons and questioned who was telling the truth. She argued that the physical evidence and the victim's testimony was the truthful evidence. These arguments were responsive to defense counsel's arguments and did not constitute improper vouching for the credibility of the victim.

A prosecutor may not vouch for the credibility of a witness, nor suggest that the government has some special knowledge that the witness is testifying truthfully. A prosecutor may, however, argue from the facts that a witness is credible or that the defendant or another witness is not worthy of belief. [*Howard, supra* at 548 (citations omitted).]

We reiterate that use of phrases, such as “I believe” or “I think,” do not automatically constitute improper vouching. *Reed, supra*. Additionally, we again note that, even if the challenged comments could be deemed impermissible, reversal is not required. A curative instruction would have cured any prejudice. Additionally, the jury was instructed that the verdict had to be based on the evidence and that the attorneys’ arguments were not evidence. *Knapp, supra* at 382. Defendant has not demonstrated plain error affecting his substantial rights. *Aldrich, supra*.

In rebuttal, the prosecutor also responded to defense counsel’s argument about her failure to call the victim’s brother and sister to testify. The prosecutor explained that attempting to elicit testimony from the witnesses would have prompted hearsay objections and that her case was strong enough based on the evidence presented. While defendant argues that the explanation misstated the law, he fails to explain or rationalize his position in his cursory argument. The issue is abandoned. *Kelly, supra*. More importantly, a curative instruction would have cured any prejudice. Reversal is not required. *Watson, supra*.

Finally, defendant argues that the prosecutor improperly vouched for the chain of evidence regarding the blood samples used for DNA analysis. The prosecutor’s argument with respect to the chain of evidence was properly based on the evidence and not the prosecutor’s beliefs. The prosecutor did not attempt to place the credibility or prestige of her office behind the evidence or suggest that she had extrajudicial information upon which the jury should convict defendant. *Reed, supra* at 398-399. There was no plain error requiring reversal. *Carines, supra*.

## VI

Defendant additionally argues that the trial court erred by failing to instruct the jury using CJI2d 20.28, a cautionary instruction explaining how the jury should consider uncharged acts of criminal sexual conduct about which the victim testified. This argument is not preserved because there was no objection to the instructions as given. *People v Gonzalez*, 256 Mich App 212, 225; 663 NW2d 499 (2003). Therefore, we review this unpreserved instructional issue for plain error affecting defendant’s substantial rights. *Id.* In a cursory argument, defendant contends that the parties and the trial court were in agreement that CJI2d 20.28 would be read to the jury, that it was not read, and that the trial court was “duty bound to explain to the jury” the manner in which the evidence could be evaluated. Because defendant improperly fails to cite any authority to support his position, we deem this issue abandoned. *Kelly, supra; People v Connor*, 209 Mich App 419, 430; 531 NW2d 734 (1995). Nevertheless, we hold that defendant has not demonstrated plain error requiring reversal. Neither party disputes that there was a plain error where the trial court failed to give the relevant and agreed-upon instruction. However, defendant has not demonstrated that the omission affected the outcome of trial. *Carines, supra*. The instructions pertaining to the essential elements of the crime were proper and the evidence in support of defendant’s conviction beyond a reasonable doubt was overwhelming. Thus, reversal is not required. We additionally reject defendant’s argument that counsel was ineffective for failing to insure that the instruction was given. Defendant has not demonstrated that, but for counsel’s conduct, the outcome of the trial would have been different. *Stanaway, supra*.

## VII

Finally, defendant argues that counsel was ineffective for failing to request CJI2d 4.11, a cautionary instruction explaining how the jury should consider evidence of other offenses, and

CJI2d 4.5, a cautionary instruction addressing impeachment by prior inconsistent statements. Defendant's conclusory argument includes no assertion that counsel's failure to request these instructions affected the outcome of trial. Defendant simply represents that he would have benefited from the instructions. Because he does not argue or offer support for his position that, but for counsel's failure to request the instructions, the outcome of trial would have been different, his claim of ineffective assistance of counsel fails. *Stanaway, supra*.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Janet T. Neff  
/s/ Christopher M. Murray