

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY ROSS,

Defendant-Appellant.

---

UNPUBLISHED  
December 18, 2003

No. 242733  
Wayne Circuit Court  
LC No. 01-012408-01

Before: Fitzgerald, P.J., and Neff and White, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for felonious assault, MCL 750.82, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant asserts that he was denied a fair trial when the trial court failed to *sua sponte* order the severance of the felon-in-possession charge, and he was denied the effective assistance of counsel when trial counsel failed to move for a severance.

This Court reviewed similar facts in *People v Mayfield*, 221 Mich App 656; 562 NW2d 272 (1997). The defendant was convicted of carrying a concealed weapon, failing to obey a police officer, and felon-in-possession. Trial counsel did not move to sever the charges, and on appeal, the defendant argued that it was impossible for him to receive a fair trial. This Court found that the defendant failed to preserve the issue, and it denied relief. Here, defendant did not preserve this issue by raising it at trial, and he has failed to establish plain error. *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999).

To establish an ineffective assistance of counsel claim, the defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

There is no showing that defendant was prejudiced by counsel's failure to move to sever the trials. In lieu of severing the charges, the trial court could erect adequate safeguards to ensure that defendant suffered no prejudice. *Mayfield, supra* at 659. The evidence of defendant's prior conviction was entered by stipulation, and there was no prejudicial error. *Id.* at 661. There is no showing that counsel's failure to request severance or a limiting instruction affected the outcome of the case.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White