

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOEL KEITH PITTS,

Defendant-Appellant.

UNPUBLISHED

October 12, 2004

No. 248263

Wayne Circuit Court

LC No. 02-013905

Before: Griffin, P.J., and Saad and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of felonious assault, MCL 750.82, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and carrying a concealed weapon (CCW), MCL 750.227. Defendant was sentenced to three days in jail with credit for time served for the felonious assault and CCW convictions, and two years’ imprisonment for the felony-firearm conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arose when defendant went to the victim’s house with a gun after receiving a menacing phone call from the victim.

Defendant’s sole claim on appeal is that he received ineffective assistance of counsel during the course of the trial because his counsel conceded that he had a weapon. We disagree. Because defendant did not raise the issue in the trial court or seek a *Ginther*¹ hearing, we limit our review of defendant’s claims to mistakes apparent on the record. *People v Riley (After Remand)*, 468 Mich 135, 139; 659 NW2d 611 (2003).

To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance was deficient and that counsel’s deficient performance prejudiced the defense. In order to demonstrate that counsel’s performance was deficient, the defendant must show that it fell below an objective standard of reasonableness under prevailing professional norms. In so

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

doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. [*Id.* at 140, citations omitted.]

Defendant openly admitted he purposely took a gun with him when he sought out the victim. Multiple witnesses testified that defendant drew a gun during the confrontation. Given this testimony, defense counsel strategically argued that defendant was not guilty of felonious assault because he never pointed the gun at anyone during the confrontation. Counsel argued that defendant had not committed breaking and entering of the building because the outside door was open and the interior door was unlocked. Additionally, counsel attempted to justify defendant's actions as duress on the basis of the threatening and offensive nature of the phone call that defendant received from the victim. The court accepted some of the defense counsel's arguments by dismissing an assault and battery charge and crediting defendant's sentence with jail time served on the felonious assault and CCW convictions. Defendant fails to persuade us that the outcome would have been more favorable to him had his counsel adopted a different trial strategy.

Affirmed.

/s/ Richard Allen Griffin

/s/ Henry William Saad

/s/ Peter D. O'Connell