

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH PALMER,

Defendant-Appellant.

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UNPUBLISHED

August 9, 2005

No. 253228

Wayne Circuit Court

LC No. 03-009687-01

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant Joseph Palmer appeals as of right his conviction of first-degree home invasion<sup>1</sup> after a bench trial. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E). The trial court convicted Palmer after hearing testimony that Palmer and a codefendant were observed entering someone else's house and removing some of its contents, which were later discovered in Palmer's vehicle. The trial court sentenced Palmer to 51 months to 20 years in prison.

Palmer's sole claim on appeal is that the trial court erred in denying his postjudgment motion for a new trial or a *Ginther*<sup>2</sup> hearing based on ineffective assistance of counsel. Because the trial court did not conduct an evidentiary hearing, our review is limited to the facts on the record.<sup>3</sup> We review the trial court's ruling on a motion for new trial for an abuse of discretion while reviewing its factual findings for clear error.<sup>4</sup>

Palmer claims that counsel was ineffective for failing to move to disqualify the trial court or seek other relief because the trial court took a guilty plea from a codefendant before presiding over his trial. A defendant in a criminal trial is entitled to expect a "neutral and detached

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<sup>1</sup> MCL 750.110a(2).

<sup>2</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

<sup>3</sup> *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000).

<sup>4</sup> *People v Crear*, 242 Mich App 158, 167; 618 NW2d 91 (2000).

magistrate of justice . . . .”<sup>5</sup> A judge is disqualified when he cannot hear a case impartially.<sup>6</sup> The party challenging the judge’s impartiality must overcome a heavy presumption of impartiality.<sup>7</sup>

Palmer’s claim is based on the assumption that the trial court became biased against him after taking his codefendant’s plea. However, prejudice or bias warranting disqualification “can never be based solely upon a decision in the due course of judicial proceedings.”<sup>8</sup> Accordingly, the fact that the trial judge took a codefendant’s guilty plea before presiding over Palmer’s bench trial does not, in and of itself, establish a basis for disqualification.<sup>9</sup> Because acceptance of the guilty plea is the sole basis on which Palmer wanted counsel to move to disqualify the trial court or seek other relief, the motion would have been futile, and defense counsel cannot be faulted for failing to raise it.<sup>10</sup> Therefore, the trial court did not err in denying Palmer’s motion for a new trial or a *Ginther* hearing.

Affirmed.

/s/ William C. Whitbeck  
/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald

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<sup>5</sup> *People v Moore*, 161 Mich App 615, 619; 411 NW2d 797 (1987).

<sup>6</sup> *Cain v Dep’t of Corrections*, 451 Mich 470, 494; 548 NW2d 210 (1996).

<sup>7</sup> *People v Wells*, 238 Mich App 383, 391; 605 NW2d 374 (1999).

<sup>8</sup> *People v Rider*, 93 Mich App 383, 388; 286 NW2d 881 (1979).

<sup>9</sup> *People v Chesbro*, 300 Mich 720, 723-724; 2 NW2d 895 (1942); *Rider, supra*.

<sup>10</sup> See *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).