

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY ALLEN HARRIS,

Defendant-Appellant.

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UNPUBLISHED

September 27, 2005

No. 255723

Genesee Circuit Court

LC No. 03-012201-FH

Before: Sawyer, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, maintaining a drug house, MCL 333.7405(1)(d), domestic violence, MCL 750.81, and possession of marijuana, MCL 333.7403(2)(d). He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of fifty-eight months to twenty years for the felon in possession conviction, thirty-four months to fifteen years for the maintaining a drug house conviction, time served (i.e., ninety-three days) for the domestic violence conviction, 365 days for the possession of marijuana conviction, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

I. Underlying Facts

Defendant's convictions arise from allegations that, in June 2003, he was maintaining a drug house while living with, and physically abusing, his "significantly older" girlfriend, Juanita Briggs. In November 2002, defendant, age forty at the time of trial, moved into a Mount Morris Township ranch-style house that sixty-four-year-old Briggs was renting. Theresa Lafitte, the landlord, indicated that she grew weary of defendant's actions and treatment of Briggs and, on June 2, 2003, served an eviction notice for defendant to move. Eventually, Lafitte, who indicated that defendant threatened both her and Briggs, called 911. When the police arrived, Briggs, who police officers described as scared and crying, was sitting on the porch. Briggs went away from the house, and quietly said to an officer, "get me out of here. He's going to kill me." The police then went in the house and requested that defendant come out. The officers did

not immediately see defendant, but eventually met him coming upstairs from the basement. Defendant was arrested.<sup>1</sup>

In a statement to police, Briggs indicated that she had an intimate relationship with defendant that had turned violent. Briggs told the police, and testified at trial, that defendant was involved in drug trafficking and owned a black handgun, which he had pointed at her and “dry fired” on occasions. She explained that defendant did not sell drugs out of the house, but brought crack cocaine and marijuana into the house, took it in the basement, and cut it into smaller quantities to sell. She told the police the general location of defendant’s gun, and indicated that defendant hid his drugs and money in vacuum cleaner bags, which he kept in a small bedroom in the basement.

Upon searching the basement, the police found a loaded nine-millimeter handgun in a white plastic bag hidden in the bottom of a dryer. The handgun, which Briggs identified as belonging to defendant, had a bullet in the chamber and an additional bullet clip attached to the holster. The police also found a box of 180 sandwich baggies, and \$350 hidden in a vacuum cleaner bag. On the main floor, the police found a bag of marijuana in one of Briggs’ shirt pockets, and a box of nine-millimeter, hollow-point bullets. Briggs told the police that the marijuana belonged to defendant, and that she did not use drugs. At that time, Briggs offered to have her blood tested for drugs.

Defendant testified on his own behalf, and also presented defense witnesses. Defendant claimed that he stayed at Briggs’ house for a “few nights.” He admitted that he smoked marijuana at the house with Mark Murray and, on one occasion, “smacked” Briggs. He denied that he ever sold drugs, threatened Lafitte and Briggs, or owned either the gun or marijuana found in the house. Defendant maintained that Briggs and others wanted “to get [him] out of the way” because Briggs’ “lesbian lover” had come into town.

Michael Partridge testified that Briggs had told him that she was going to “get rid” of defendant. On one occasion, Partridge saw that one of Briggs’ eyes “was messed up,” and Briggs said that she had run into a tree. Partridge indicated that he has “never” known Briggs to use drugs. Murray testified that he visited defendant at the house twenty to forty times, and never saw defendant with a gun or cocaine, or physically abuse Briggs. He admitted that he smoked marijuana with defendant, and that others also “came by” to smoke marijuana. Murray saw Briggs “hit a joint once or twice,” but indicated that she was “not a serious smoker.”

## II. Sufficiency of the Evidence

Defendant first argues that the evidence was insufficient to support his convictions of maintaining a drug house and possession of marijuana. We disagree.

### A. Standard of Review

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<sup>1</sup> The police described defendant as aggressive, belligerent, “out of control,” and screaming that Briggs was “hit.”

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view “the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). This Court should not interfere with the jury’s role of determining the weight of the evidence and credibility of witnesses, but must draw all reasonable inferences and resolve credibility choices in support of the jury’s verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

#### B. Maintaining a Drug House

MCL 333.7405(1)(d) provides that a person “[s]hall not knowingly keep or maintain a . . . dwelling . . . or place, that is frequented by persons using controlled substances in violation of this article for the purpose of using controlled substances, or that is used for keeping or selling controlled substances in violation of this article.” To “keep or maintain” a drug house “it is not necessary to own or reside at one, but simply to exercise authority or control over the property for purposes of making it available for keeping or selling proscribed drugs and to do so continuously for an appreciable period.” *People v Griffin*, 235 Mich App 27, 32; 597 NW2d 176 (1999).

Viewed in a light most favorable to the prosecution, a rational trier of fact could find the required elements of maintaining a drug house beyond a reasonable doubt. Evidence was presented that defendant lived in the house with Briggs from November 2002 until he was arrested on June 2, 2003, and had refused to move when Briggs and the landlord requested he do so. Defendant admitted that he paid bills, had furnishings in the house, and gave Briggs money to buy items for the house. Also, Murray testified that he visited defendant at the house between twenty and forty times. This evidence supports a reasonable inference that defendant exercised some authority over the premises and that, not only did he retain control over the home, but that he did so continuously for an appreciable period.

Further, Briggs testified that defendant brought crack cocaine and marijuana into the house and packaged it in the basement. The police found 180 sandwich baggies, which an officer indicated are used for packaging drugs, a loaded nine-millimeter handgun, and \$350 in the basement. In addition, Murray, a self-described “weed smoker,” testified that he and defendant smoked marijuana together in the house on numerous occasions, and defendant admitted smoking marijuana with Murray in the house. Moreover, Murray testified that people smoked marijuana in the house “all the time,” that “whoever came by” smoked marijuana, and that

basically [the house] was a place you know that - - you know smoke weed.  
Everybody that came by there basically was [sic] weed smokers - -

From this evidence, viewed in a light most favorable to the prosecution, a rational trier of fact could reasonably infer that people frequented the house to use drugs, and that defendant kept drugs in the house. Although defendant asserts that evidence supporting his conviction was weak, the jury was entitled to accept or reject any of the evidence presented. See *People v Perry*,

460 Mich 55, 63; 594 NW2d 477 (1999). In sum, the evidence was sufficient to sustain defendant's conviction of maintaining a drug house.

### C. Possession of Marijuana

We also reject defendant's claim that there was insufficient evidence that he possessed the marijuana found in Briggs' shirt. To sustain a conviction for possession of marijuana, the prosecution is required to show that (1) the defendant possessed a controlled substance, (2) the substance possessed was marijuana, and (3) the defendant knew he was possessing marijuana. See CJI2d 12.5. Defendant challenges only the possession element.

Possession of a controlled substance may be either actual or constructive, and may be joint as well as exclusive. *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Constructive possession exists when the totality of the circumstances indicates a substantial link between the defendant and the contraband. *Id.* at 520; *People v Vaughn*, 200 Mich App 32, 36; 504 NW2d 2 (1993). "The essential question is whether the defendant had dominion or control over the controlled substance." *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

Viewed in a light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that defendant had constructive possession of the marijuana. Briggs testified that defendant brought drugs into the house, that the marijuana found in her shirt belonged to defendant, and that she offered to take a blood test to prove that she did not use marijuana. Defendant admitted that he had smoked marijuana, and a defense witness, Murray, corroborated defendant's use of marijuana. Murray also testified that Briggs was "not really" a marijuana smoker, and Partridge indicated that he "never" knew Briggs to use marijuana. Defendant's challenge to the sufficiency of the evidence establishing possession concerns the credibility of the witnesses and the weight of the evidence. But this Court will not interfere with the jury's determination of the weight of the evidence or the credibility of the witnesses. *Nowack, supra*. The evidence was sufficient to sustain defendant's conviction of possession of marijuana.

### III. Prior Convictions

Next, defendant argues that he was denied a fair trial when the trial court allowed the prosecutor to elicit evidence of his and his defense witnesses' prior convictions, in violation of MRE 609. We disagree.

#### A. Mark Murray

Defendant argues that the prosecutor improperly questioned Murray about a prior conviction for breaking and entering, which defendant contends occurred more than twenty years before trial. During the prosecutor's cross-examination of Murray, the following exchange occurred:

*Q.* And you've got some experience?

\* \* \*

A. Well, I went to prison when I was 18. Yeah.

Q. Okay.

A. Twenty-some years ago.

Q. And in fact your experience is a little more extensive than that?

A. What ya [sic] mean by that?

Q. You've had some passes through the criminal justice system - -

\* \* \*

A. Yeah, when I was - - yeah, a teenager and early adulthood, yeah.

Q. How many times?

A. I can't recall. I mean I know two or three times.

Q. Okay.

A. You know?

Q. Do you recognize [the trial judge] here?

A. Yes.

Q. In fact she sentenced you for B and E occ - - B and E unoccupied, didn't she?

A. I don't know. I can't recall.

Q. Gave you 5 to 10. I looked it up.

A. Well, I couldn't recall. No, I don't think so.

Defense counsel objected, stating "improper impeachment." The prosecutor argued that he could impeach Murray because he denied the extent of his criminal record. The court overruled the objection. The following exchange then occurred between the prosecutor and Murray:

Q. Mr. Murray, let's be honest. You have a - - record, do you not?

A. Yes.

Q. And it's not just when you were 18. And you also have a conviction - - you were sentenced by [the trial judge] for breaking and entering unoccupied?

A. No. I can't recall that and I don't believe that.

This Court reviews a trial court's decision to allow impeachment by evidence of a prior conviction for an abuse of discretion. *People v Coleman*, 210 Mich App 1, 6; 532 NW2d 885 (1995). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

On this record, we cannot conclude that the trial court's decision was an abuse of discretion. A prior conviction may be used to impeach a witness' credibility if the conviction satisfies the criteria set forth in MRE 609. Defendant only argues that Murray's breaking and entering conviction was not admissible under MRE 609(c), which provides that "[e]vidence of a conviction . . . is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date."

There is no evidence on the record, and defendant has not provided any, that supports his claim that Murray's breaking and entering conviction or the release date for the conviction occurred more than ten years previously. In his appellate brief, defendant states that "the record, uncontradicted by the prosecutor and not ruled on by the trial court to the contrary, proves Murray's breaking and entering conviction occurred 20 years before trial and thus its admission violated the 10-year restriction under MRE 609(c)." But the record does not support defendant's statement. Although Murray testified that he was in prison "twenty-some years ago," the court subsequently placed on the record, outside the presence of the jury, that Murray had *two* prior convictions for breaking and entering, and one prior conviction for larceny from a building.

Moreover, even if the challenged prior conviction was inadmissible under MRE 609(c), reversal would not be warranted. See *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999) (a preserved nonconstitutional error is not grounds for reversal unless it is more probable than not that the error was outcome determinative). As previously indicated, during cross-examination, Murray indicated, inter alia, that he "can't recall" the conviction, and "don't believe that" he was sentenced for the conviction. There was no evidence admitted to contradict Murray's denial. Additionally, Murray admitted that he was convicted of receiving and concealing stolen property, and larceny from a building. Furthermore, given the unchallenged evidence against defendant (see part II, *supra*), it is highly improbable that the outcome would have been different had the trial court excluded the challenged evidence. Consequently, reversal is not warranted.

#### B. Michael Partridge

Defendant argues that the prosecutor improperly elicited from Partridge that he had a prior conviction for assault with intent to commit great bodily harm, which was "not an offense legally admissible under MRE 609." During the prosecutor's cross-examination of Partridge, the following exchange occurred:

*Q.* You got some prior convictions as well, is that right?

\* \* \*

A. Yes, sir.

Q. And what are they?

A. *I got - - I only got one - - um - - great bodily harm less than murder.*

Q. Okay. And so you were out of circulation for awhile [sic]?

A. Um - - no. I just go it - - I just caught this. I just got this, the great bodily harm less than murder; it was just on the 30th.

Q. All right. But I'm talkin' about - - that's a pending case?

A. That's a pending case.

Q. Okay. Prior to that you've got some convictions in your past? [Emphasis added.]

Because defendant did not object to this testimony below, this issue is not properly preserved for appeal. Therefore, this Court reviews this unpreserved claim for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999).

The record demonstrates that Partridge's response was an unsolicited answer to a properly asked question. The prosecutor asked the witness to identify his prior convictions, and he named a pending charge. Generally, "an unresponsive, volunteered answer to a proper question is not grounds for the granting of a mistrial." *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). Furthermore, after the unresponsive answer, the prosecutor redirected the witness by noting that the assault was a pending case and again asking about prior convictions. Also, the prosecutor did not ask any questions regarding the assault charge, or discuss the matter during closing argument. Accordingly, this claim does not warrant reversal.

### C. Defendant

Defendant argues that the prosecutor asked an "open-ended question about his criminal history," thereby impermissibly eliciting a response about defendant's jail escape conviction. Before defendant testified, the court ruled that, under MRE 609, the prosecutor could impeach defendant with his 1997 conviction of "attempt obtaining by false pretenses," his 1999 conviction of "attempt larceny from a person," and his being an habitual offender, second offense, but could not use his 1989 conviction of larceny from a building or his jail escape conviction.

During the prosecutor's cross-examination of defendant, the following exchange occurred:

Q. Tell us about your criminal record, please.

A. Ah - - I was on . . . parole for . . . accepting money under false pretenses. Ah - - *I had a so-called jail escape.* I was on work release and I didn't come back.

Does that make me in possession of that firearm, my past? That ain't - - you know I'm not on trial for my past.

*Q.* You have convictions for attempted larceny from a person, is that right? [Emphasis added.]

Although the prosecutor should not have asked an open-ended question about defendant's criminal history, reversal is not warranted on this basis. "The erroneous admission of evidence of a prior conviction is harmless error where reasonable jurors would find the defendant guilty beyond a reasonable doubt even if evidence of the prior conviction had been suppressed." *Coleman, supra* at 7; see also *Lukity, supra*. In the instant case, the evidence of defendant's prior conviction for jail escape was of comparatively minor importance considering the totality of the admissible evidence against him. Consequently, reversal is not warranted.

#### IV. Sentence

We reject defendant's claim that he is entitled to resentencing because the trial court failed to consider all relevant sentencing factors when imposing his sentences for the felon in possession of a firearm and maintaining a drug house convictions, which defendant maintains are disproportionate. Defendant, who was sentenced as an habitual offender, fourth offense, concedes that his sentences of fifty-eight months to twenty years for his felon in possession conviction, and thirty-four months to fifteen years for his maintaining a drug house conviction are within the applicable statutory sentencing guidelines ranges. Under the sentencing guidelines statute, this Court must affirm a sentence within the applicable guidelines range absent an error in the scoring of the guidelines or reliance on inaccurate information in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 310-311; 684 NW2d 669 (2004). On appeal, defendant does not allege that the guidelines were erroneously scored or that the trial court relied on inaccurate information in determining his sentence. Also, contrary to defendant's assertion, there is no legal requirement that a trial court state on the record that it understands it has discretion and is utilizing that discretion. *People v Knapp*, 244 Mich App 361, 389; 624 NW2d 227 (2001).

We also reject defendant's claim that he must be resentenced because the trial court's findings supporting his sentence were not determined by a jury, as mandated by *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). In *Blakely*, the United States Supreme Court struck down as violative of the Sixth Amendment a determinate sentencing scheme in which the sentencing judge was allowed to increase the defendant's maximum sentence on the basis of facts that were not reflected in the jury's verdict or admitted by the defendant. Our Supreme Court has stated that the holding in *Blakely* does not apply to Michigan's indeterminate sentencing scheme. *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004). Consequently, defendant's argument is without merit.

#### V. Defendant's Supplemental Brief

##### A. Sufficiency of the Evidence

In a supplemental brief, defendant argues that the evidence was insufficient to support his convictions of felon in possession of a firearm and felony-firearm. We disagree.

To sustain a conviction for felon in possession of a firearm, the prosecution must establish beyond a reasonable doubt that the defendant (1) possessed a firearm, (2) had been convicted of a prior felony, and (3) less than five years had elapsed since the defendant was discharged from probation. MCL 750.224(f); *People v Parker*, 230 Mich App 677, 684-685; 584 NW2d 753 (1998). Defendant does not dispute that he was convicted of a specified felony, and thus, was ineligible to possess a firearm. To sustain a conviction for felony-firearm, the prosecution must establish beyond a reasonable doubt that the defendant (1) possessed a firearm (2) during the commission of, or the attempt to commit, any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). For both offenses, defendant challenges only the possession element.

Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to infer that defendant had possession of the handgun found in the basement. Possession of a weapon may be actual or constructive and may be proved by circumstantial evidence. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989). “[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant.” *Id.* at 470-471.

As previously indicated, there was evidence that defendant had lived in the house for several months, kept drugs, money, and a black handgun in the basement, and had pointed and “dry fired” the gun at Briggs on occasions. Defendant also admitted that he kept furnishings in the basement. When the police entered the house and requested that defendant come out, they did not immediately see him. Rather, they eventually apprehended defendant coming from the basement. The loaded nine-millimeter black handgun was thereafter found in the basement, concealed in a white plastic bag, hidden in the bottom of a dryer. From this evidence, a jury could reasonably infer that defendant hid the weapon in the basement and, therefore, he knew its location and it was reasonably accessible to him. In sum, viewed in a light most favorable to the prosecution, the evidence was sufficient to sustain defendant’s convictions of felon in possession of a firearm and felony-firearm.

#### B. Jail Credit

Defendant also argues that this Court must remand this case to the trial court to determine if he is entitled to any credit against his new minimum sentences for the time he served in jail before he was sentenced for the instant crimes, which he committed while on parole. We disagree.

“Defendant failed to object at the sentencing hearing, and, thus, this issue is unpreserved. Unpreserved sentencing errors are reviewed for plain error affecting substantial rights.” *People v Meshell*, 265 Mich App 616, 638; 696 NW2d 754 (2005).

In *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004), this Court explained:

When a parolee is arrested for a new criminal offense, he is held on a parole detainer until he is convicted of that offense, and he is not entitled to credit for time served in jail on the sentence for the new offense. MCL 791.238(2).<sup>[2]</sup> A parole detainee who is convicted of a new criminal offense is entitled, under MCL 791.238(2), to credit for time served in jail as a parole detainee, but that credit may only be applied to the sentence for which the parole was granted. *People v Stewart*, 203 Mich App 432, 433; 513 NW2d 147 (1994); 523 NW2d 631 (1994); *People v Brown*, 186 Mich App 350, 359; 463 NW2d 491 (1990). A parolee who is sentenced for a crime committed while on parole must serve the remainder of the term imposed for the previous offense before he serves the term imposed for the subsequent offense. MCL 768.7a(2).<sup>[3]</sup>

Defendant correctly notes that a parole violator is not automatically required to serve all the time remaining on his original sentence, up to the maximum, before he can start serving his new sentence. *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569, 571-572, 579-581; 548 NW2d 900 (1996). Rather, MCL 791.238(2) "requires the offender to serve at least the combined minimums of his sentences, plus whatever portion of the earlier sentence the Parole Board may, because the parolee violated the terms of parole, require him to serve." *Id.* at 584. Absent a showing that defendant has served the mandatory time for his prior sentence or that he was discharged from that sentence, credit for time served on the instant sentence would be inappropriate. See *People v Watts*, 186 Mich App 686, 690; 464 NW2d 715 (1991).

At sentencing, the court stated that defendant was not entitled to any credit against his new felony sentences because "[a]ll credit goes on the underlying offense for which he was on parole at the time." The Presentence Investigation Report (PSIR) states that, because of his "parole status," defendant was "subject to a mandatory consecutive sentence, without credit for time served." As previously indicated, defendant did not object, or challenge the PSIR at the sentencing hearing. On appeal, defendant makes a general request for a remand to determine if he is entitled to credit, but he has failed to offer any proof that he has served the mandatory time for his prior sentence or that he was discharged from that sentence, and has not provided this Court with any results from his parole hearing. "Defendant may not leave it to this Court to search for a factual basis to sustain or reject his position." *People v Traylor*, 245 Mich App 460,

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<sup>2</sup> MCL 791.238(2) provides, in part:

A prisoner violating the provision of his or her parole . . . is liable, when arrested to serve out the unexpired portion of his or her maximum imprisonment.

<sup>3</sup> MCL 768.7(a)(2) provides, in part:

If a person is convicted and sentenced to a term of imprisonment for a felony committed while the person was on parole from a sentence for a previous offense, the term of imprisonment imposed for the later offense shall begin to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense.

464; 628 NW2d 120 (2001) (citation omitted). In sum, defendant has not established that he is entitled to a remand in this case. See MCR 7.211(C).

## VI. Defendant's Standard 4 Brief

### A. Effective Assistance of Counsel

In a supplemental brief filed in propria persona, defendant argues that defense counsel was ineffective for failing to move for a directed verdict of acquittal on the charges of maintaining a drug house and possession of marijuana. We disagree.

Because defendant failed to raise this issue in the trial court in connection with a motion for a new trial or an evidentiary hearing,<sup>4</sup> this Court's review is limited to mistakes apparent on the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000).

Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, a defendant must show that counsel's performance was below an objective standard of reasonableness under prevailing norms and that the representation so prejudiced the defendant that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Id.*

In light of our determination in part II, that the evidence was sufficient to sustain defendant's convictions of maintaining a drug house and possession of marijuana, it follows that counsel's inaction did not deprive defendant of the effective assistance of counsel. *Effinger, supra.*

### B. Motion to Remand

We also reject defendant's final claim that this Court should reconsider its denial of his motion to remand for an evidentiary hearing to develop the record concerning an ineffective assistance of counsel claim.

Defendant contends that remand is necessary to develop his claim that defense counsel was ineffective for not seeking an adjournment of trial because he had only one week to prepare after previous counsel withdrew. When claiming ineffective assistance due to defense counsel's unpreparedness, a defendant must show prejudice resulting from the lack of preparation. *People v Caballero*, 184 Mich App 636, 640, 642; 459 NW2d 80 (1990). Here, defendant has not identified any specific omission by counsel, nor has he identified what prejudice he suffered as a result of defense counsel's alleged unpreparedness. Furthermore, during trial, the court noted that defendant's former counsel had been present "for a substantial portion of trial," had assisted

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<sup>4</sup> This Court denied defendant's motion to remand "for failure to persuade the Court of the necessity of a remand at this time." *People v Harris*, unpublished order entered September 24, 2004 (Docket No. 255723).

defense counsel throughout trial, and “had been communicating” with defendant. Defense counsel noted that he was prepared to try the case, and had sought the assistance of former counsel when necessary. There is simply nothing in the record that supports defendant’s assertion that defense counsel was unprepared for trial, and defendant has not identified what useful information could be produced at an evidentiary hearing.

Defendant also claims that remand is necessary to develop his claim that defense counsel was ineffective for failing to “attack contradictions in the preliminary exam and trial testimony of key prosecution witnesses.” But defendant has not identified the alleged contradictions, the witnesses who allegedly gave the contradictory testimony, or what factual information could potentially be obtained at an evidentiary hearing. As the appellant, defendant is required to do more than merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. See *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984).

Defendant further argues that remand is necessary to develop his claim that defense counsel was ineffective for failing to “move in limine to limit questioning of [his] criminal background and that of other defense witnesses.” But defendant has failed to provide any information regarding what criminal background should have been precluded, on what basis defense counsel could have successfully moved to preclude the evidence, or how he was prejudiced by the admission of the evidence. In short, defendant’s cursory presentation of this assertion, without adequate analysis, is insufficient to properly present the issue for this Court’s review.<sup>5</sup> *Id.*

For these reasons, we are not persuaded that a remand is necessary.

Affirmed.

/s/ David H. Sawyer  
/s/ Michael J. Talbot  
/s/ Stephen L. Borrello

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<sup>5</sup> We note that the admissibility of defendant’s prior convictions was argued, and ruled on by the court, before he testified.