

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRAVION RAYMON WILLIS,

Defendant-Appellant.

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UNPUBLISHED

September 26, 2006

No. 261566

Oakland Circuit Court

LC No. 04-197589-FH

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Defendant was convicted by a jury of third-degree fleeing and eluding, MCL 257.602a(3), and was sentenced as a fourth habitual offender, MCL 769.12, to serve a term of two to fifteen years' imprisonment. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In June 2004, Officers Brian Wood and Michael Elvis were on patrol in their marked police vehicle when Officer Wood observed defendant turn east from South Sanford Road onto Auburn Road without first stopping at the red light. At the time, the officers were heading west on Auburn Road and approaching the intersection of South Sanford and Auburn.

Before defendant passed them on Auburn, the officers activated their overhead lights. They made a U-turn and followed defendant. Defendant cut through a parking lot to North Francis where he passed four or five houses before stopping the car, jumping out, and running east through several yards. Officer Wood gave chase on foot and apprehended defendant.

On appeal, defendant presents several claims of ineffective assistance of counsel. Because defendant failed to move for a new trial or an evidentiary hearing on these claims, our review is limited to mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). Whether the facts in the record suggest that defendant has been deprived of his right to the effective assistance of counsel presents a question of constitutional law that we review de novo. See *People v Leblanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). To overcome this presumption, the defendant must meet a two-pronged test. The defendant must first show that counsel's performance was deficient as measured against an objective standard of

reasonableness under the circumstances and according to prevailing professional norms. *LeBlanc, supra* at 578. Second, the defendant must show that the deficiency was so prejudicial that he was deprived of a fair trial such that there is a reasonable probability that but for counsel's unprofessional errors the trial outcome would have been different. *Id.* A defendant must also overcome the strong presumption that counsel's actions constituted sound trial strategy under the circumstances. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000).

Defendant first claims he was denied the effective assistance of counsel because, by arguing multiple defense theories at trial, his trial attorney failed to present a coherent defense. We disagree.

During the trial, defense counsel posited the theory that the traffic light was green for defendant and, therefore, the police did not have a legal basis to stop defendant. In addition, defense counsel argued that defendant ran from the police because Officer Elvis had a reputation for beating black people. Defense counsel's apparent strategy of arguing several theories in the hope that the jury would believe at least one was not unreasonable considering that two police officers testified that defendant ran a red light and defendant could not provide an evidentiary basis for his claim that Officer Elvis had a reputation for beating black people. Further, counsel may properly argue multiple defenses during the course of a trial. *People v Cross*, 187 Mich App 204, 205-206; 466 NW2d 368 (1991).

Defendant also argues that counsel was ineffective because he announced before the jury his intention to call the chief of police who would, allegedly, confirm Officer Elvis's propensity to beat black people, yet counsel never called this witness. Outside the presence of the jury, counsel conceded to the court that the Michigan Rules of Evidence precluded such testimony. See MRE 608(b). Even accepting that counsel should have investigated whether the witness's testimony would be admissible before announcing in front of the jury his intention to call this witness, there does not exist a reasonable probability that the result of the proceeding would have been different absent the statement. There is simply no indication that the jury viewed the failure to produce the police chief adversely to the defense. Indeed, defense counsel successfully placed the idea before the jury that the chief of police would have testified to several incidents in which Officer Elvis beat up black persons. Although the jury was instructed that the comments of the attorneys were not evidence, that statement went unchallenged at the time and defense counsel strongly argued that defendant fled from the police because he was aware of Officer Elvis's reputation for beating up black people arrested by him. Under the circumstances, there is no indication in the record that the statement by defendant's attorney prejudiced the defense.

Defendant next argues that he was denied the effective assistance of counsel when defense counsel was unable to provide an evidentiary basis for calling the chief of police because defense counsel did not have available his copy of the Michigan Court Rules. Again, we disagree. The witness's testimony was not allowed under the Michigan Rules of Evidence and would have been excluded regardless of whether or not counsel had his rule book with him. Defendant has not, therefore, shown any prejudice arising from his counsel's failure to have his copy of the Michigan Court Rules available.

Defendant also argues that he received ineffective assistance when counsel failed to object to Officer Wood's testimony that Officer Elvis had never been accused of beating black

people. Defendant submits that counsel should have objected to this testimony because the court precluded testimony by the chief of police regarding Officer Elvis's history of beating black people. However, Officer Wood's testimony was in response to defense counsel's questioning in pursuit of defendant's theory of the case that defendant ran because of Officer Elvis's reputation. Defendant has not shown how he was prejudiced by that testimony and, therefore, has not overcome the strong presumption that he was afforded the effective assistance of counsel. *Toma, supra; Rodgers, supra.*

Defendant's argument that counsel's failure to question defendant on direct examination regarding his fear of Officer Elvis amounted to ineffective assistance also fails. Counsel questioned defendant about this allegation on redirect examination. Counsel's failure to raise the issue on direction examination did not, therefore, prejudice the outcome of defendant's trial.

Finally, defendant submits that he received ineffective assistance at sentencing when his attorney of record sent an associate in his stead. The effectiveness of counsel's assistance at the sentencing proceeding is not determined by his participation at the trial. *People v Edwards*, 18 Mich App 526, 528-529; 171 NW2d 592 (1969). Counsel at sentencing argued that defendant ran from the police because he did not have his driver's license with him and was afraid that, as a result, his parole may be violated. In fact, the trial record indicates that defendant had his license on him at the time he committed the offense.<sup>1</sup> Although counsel should have familiarized himself with the trial record, defendant has not shown that the court's sentencing decision would have been any different had trial counsel been at the sentencing.

Based on the record, under review de novo of this constitutional issue, defendant has not established the deficient performance and prejudice required to succeed on a claim of ineffective assistance of counsel. *Leblanc, supra* at 578-579.

Defendant next argues on appeal that his sentence violates the principle of proportionality. If the trial court's sentence is within the appropriate guidelines range, this Court must affirm the sentence unless the trial court erred in scoring the guidelines or relied on inaccurate information in determining the defendant's sentence. *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003); MCL 769.34(10). Defendant's two- to fifteen-year sentence is within the minimum guidelines range, and there is no claim by defendant that the trial court erred in scoring the guidelines or by relying on inaccurate information. Accordingly, the trial court did not violate the principle of proportionality when it sentenced defendant within the minimum sentencing guidelines range.

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<sup>1</sup> Counsel's confusion may have been caused in part by defendant's claim at the time of his arrest that he fled the police because he was not carrying his license. After the investigating officer informed defendant that he had obtained defendant's license during the search of his possessions, defendant changed his story to say that he fled because he simply did not want to get into any more trouble.

Affirmed.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder