

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GOLDIE STRONG POWELL,

Defendant-Appellant.

UNPUBLISHED

October 7, 2008

No. 279770

Oakland Circuit Court

LC No. 2006-211178-FH

Before: O’Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial conviction of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1). The trial court sentenced defendant to twelve months’ probation. Because there were no errors warranting relief, we affirm. This appeal has been decided without oral argument under MCR 7.214(E).

Defendant first argues that she was denied the effective assistance of counsel when defense counsel did not move to sever her trial from that of codefendant McKinley Powell. A defendant that claims to have been denied the effective assistance of counsel must establish that (1) the performance of defense counsel was below an objective standard of reasonableness under prevailing professional norms, and (2) a reasonable probability exists that, in the absence of counsel’s unprofessional errors, the outcome of the proceedings would have been different. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002). A defendant must overcome a strong presumption that the assistance of defense counsel was sound trial strategy. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Because there was no *Ginther*¹ hearing before the trial court, our review is limited to mistakes apparent on the record. *People v Cox*, 268 Mich App 440, 453; 709 NW2d 152 (2005).

Decisions regarding which motions to file are matters of trial strategy. *People v Traylor*, 245 Mich App 460, 463; 628 NW2d 120 (2001). Here, the record alone is not sufficient to overcome the strong presumption that defense counsel’s decision not to file a motion to sever was sound trial strategy. *Stanaway*, *supra* at 687. Without the aid of evidence from a *Ginther*

¹ *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

hearing, this Court cannot answer important questions, such as why defense counsel chose not to make a motion to sever and whether defense counsel believed it was necessary to introduce evidence of McKinley Powell's actions and the police chase to give the jury a full understanding of the situation. Therefore, defendant effectively waived this issue. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Furthermore, where there was clear and repeated testimony that no incriminating evidence was found on defendant or codefendant, or in codefendant's truck, where there was further evidence that codefendant was not charged with any drug offenses, and where the judge instructed the jury to consider each defendant's case separately and only on the evidence that applied to it, we do not believe the joint trial prejudiced defendant.

Defendant next argues that she was denied the effective assistance of counsel when defense counsel failed to object to an officer's testimony indicating that the area was known for drug activity and detailing her ability to analyze street-level narcotics crimes. Again, in the absence of a *Ginther* hearing, this Court's review of this issue is limited to mistakes apparent from the record. *Cox, supra* at 453.

The record was not sufficient to overcome the strong presumption that defense counsel's failure to object to this testimony was sound trial strategy or to establish that, but for counsel's alleged error, the outcome of the trial would have been different. *Stanaway, supra* at 687. In light of the instructions to the jury and the repeated evidence that no drugs were found on defendant or codefendant or in codefendant's truck, we do not believe the officer's testimony prejudiced defendant.

Finally, we note that we need not address the argument labeled "Argument II" in defendant's brief on appeal because it did not raise any issues that were not already addressed in defendant's "Argument I."

There were no errors warranting relief.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Elizabeth L. Gleicher