

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ADAM KADRIOSKI,

Defendant-Appellant.

UNPUBLISHED

August 18, 2009

No. 283571

Oakland Circuit Court

LC No. 2007-212657-FC

Before: Stephens, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree felony murder, MCL 750.316(1)(b), and armed robbery, MCL 750.529. He was sentenced to life imprisonment without parole for the murder conviction and a concurrent term of 15 to 30 years' imprisonment for the robbery conviction. He appeals as of right. We affirm.

Defendant's convictions arise from the robbery of the Bozana Party Store in Rochester Hills, Michigan, in which the owner, Cedomir Taseski, was killed. Taseski died from blunt head injuries and multiple stab wounds. Defendant presented a defense of legal insanity.

On appeal, defendant argues that defense counsel, during jury voir dire, opening statement, and closing argument, improperly informed the jury that defendant would not be punished if the jury returned a verdict of not guilty by reason of insanity, and that defense counsel's comments deprived defendant of the effective assistance of counsel. We disagree.

Whether a person has been denied the effective assistance of counsel is a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). To establish ineffective assistance of counsel, a convicted defendant must satisfy the two-part test articulated in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). See *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). The defendant must first show that counsel's performance was deficient, which requires a showing that counsel made errors so serious that counsel was not performing as the "counsel" guaranteed by the Sixth Amendment. *Id.* at 600. In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *Id.* Second, the defendant must show that the deficient performance prejudiced the defense. *Id.* To demonstrate prejudice, the defendant must show a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.*

Defendant alternatively argues that, independent of an ineffective assistance of counsel claim, reversal is required because defense counsel's comments amounted to plain error affecting his substantial rights, thereby justifying relief under *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). However, because this alternative claim is based solely on the alleged improper comments by defense counsel, and defendant does not identify any alleged error independent of defense counsel's conduct, we conclude that this issue is properly analyzed only within the framework for an ineffective assistance of counsel claim.

As defendant correctly observes, it is generally improper to comment on the disposition of a defendant after a verdict. *People v Goad*, 421 Mich 20, 25-26; 364 NW2d 584 (1984). Further, references to the disposition of an accused after a verdict are proscribed throughout the entire trial process, including voir dire, arguments of counsel, and jury instructions. *In re Spears*, 250 Mich App 349, 352; 645 NW2d 718 (2002). This rule is intended to prevent a jury from deciding a case on the basis of facts unrelated to the defendant's guilt or innocence. *Id.*

The remarks in this case do not resemble those uttered in *People v Szczytko*, 390 Mich 278; 212 NW2d 211 (1973). In *Szczytko*, the prosecutor argued in rebuttal:

“Counsel brings up, if you come back by reason of—not guilty by reason of insanity that the defendant will go to a mental institution appropriate [sic] considered and according to the laws of the State of Michigan. That's right. But all he has to do is, through some legal paper work ask to be released . . .” [*Id.* at 283.]

In contrast, counsel in the present case responded to a juror's questions during voir dire with restraint and specifically deferred the issue of punishment to the court. In both his opening statement and his closing argument, he refrained from discussion of post-trial placement.

Here, viewed in context, defense counsel's remarks were not intended as comments on defendant's possible disposition if the jury determined that defendant was insane. Indeed, when a juror raised this subject during voir dire, defense counsel expressly informed the juror that the jury is not permitted to consider possible penalty, punishment, or placement, and that he was not permitted to comment on that subject. In the challenged comments, defense counsel merely reinforced that it was an established facet of the law that an insane person is not legally or criminally responsible for his actions, and that there was a rational basis for distinguishing between an individual who was knowingly vicious and an individual who did not understand what he was doing because he was suffering from a mental illness. Defense counsel's conduct did not fall below an objective standard of reasonableness. *Carbin, supra*.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder