

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FELICIA WALKER,

Defendant-Appellant.

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UNPUBLISHED  
November 4, 2003

No. 242182  
Wayne Circuit Court  
LC No. 01-004115

Before: Gage, P.J., and White and Cooper, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of discharging a firearm at a dwelling, MCL 750.234b, and possession of a firearm during the commission of a felony, MCL 750.227b.<sup>1</sup> The trial court sentenced defendant to eight months' to four years' imprisonment on the weapon discharge conviction and two years' imprisonment on the felony-firearm conviction. Defendant now appeals as of right. We affirm.

Defendant's sole issue on appeal is that she was denied the effective assistance of counsel. Because defendant failed to preserve this issue by filing a timely motion for a Ginther hearing, we are limited to a review of the existing record. *People v Sabin (On Second Remand)*, 242 Mich App 656, 659; 620 NW2d 19 (2000). To establish ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001), citing *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Defendant must also demonstrate a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different, and that the attendant proceedings were fundamentally unfair or unreliable. *Rodgers, supra*, citing *People v Poole*, 218 Mich App 702, 718; 555 NW2d 485 (1996). Effective assistance of counsel is presumed, and defendant bears a heavy burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

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<sup>1</sup> Defendant was acquitted of assault with intent to murder, MCL 750.83.

Defendant first claims she was denied the effective assistance of counsel because her trial counsel failed to thoroughly investigate her case. The record, however, is devoid of any evidence concerning defense counsel's trial preparation efforts. There is no indication in the record that defense counsel was unfamiliar with defendant's case or failed to investigate crucial matters that would have benefited the defense. In making a claim of 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). Defendant has failed to produce any evidence of counsel's unpreparedness and has failed to demonstrate prejudice resulting from any alleged unpreparedness. Accordingly, defendant's claim is without merit.

Defendant next claims that her trial counsel's failure to thoroughly cross-examine complaining witnesses constituted ineffective assistance of counsel. However, defense counsel's method of cross-examining witnesses is a matter of trial strategy, and this Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). Here, the record establishes that defense counsel did cross-examine witnesses regarding their relationships to each other and defendant in an effort to demonstrate potential biases. Further, through cross-examination, defense counsel highlighted crucial inconsistencies in a primary witness' testimony. Under the circumstances, defendant's claim that defense counsel failed to thoroughly cross-examine witnesses is without merit.

Defendant lastly claims that her trial counsel's failure to call defense witnesses constituted ineffective assistance of counsel. The decision to call witnesses, however, is presumed to be trial strategy. *Rockey, supra* at 76-77. While defendant claims that defense counsel failed to call three witnesses who were initially listed as witnesses by previous counsel, the record fails to demonstrate that the testimony of these witnesses would have benefited the defense. Defendant has failed to produce any evidence regarding the substance of the potential testimony of these witnesses. This Court must presume that counsel's failure to call the witnesses was a strategic decision. Thus, defendant's claim is without merit.

Affirmed.

/s/ Hilda R. Gage  
/s/ Helene N. White  
/s/ Jessica R. Cooper