

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEONARD A. SPRATT,

Defendant-Appellant.

UNPUBLISHED

June 17, 2003

No. 239150

Wayne Circuit Court

LC No. 01-005946-01

Before: Fitzgerald, P.J., and Hoekstra and O’Connell, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of felonious assault, MCL 750.82, and sentenced to six months’ probation. We affirm.

On appeal, defendant contends that he was denied his right to effective assistance of counsel. We disagree.

To preserve the issue of ineffective assistance of counsel, a defendant must move for a new trial or an evidentiary hearing before the trial court. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Because defendant failed to move for a new trial or request a *Ginther*¹ hearing below, this Court’s review of the issue is limited to mistakes apparent on the record. *Id.* “If the record does not contain sufficient detail to support defendant’s ineffective assistance claim, then he has effectively waived the issue.” *Id.*

This Court reviews de novo questions of constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). “To establish a denial of effective assistance of counsel under the state and federal constitutions, a defendant must demonstrate that counsel’s performance was deficient and that, under an objective standard of reasonableness, counsel made an error so serious that counsel was not functioning as an attorney as guaranteed by the Sixth Amendment.” *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994); see also *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). The deficiency must be prejudicial to the defendant. *Daniel*, *supra*. Further, the defendant must overcome the presumption that the challenged action is sound trial strategy. *Id.*

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

Defendant claims that his trial counsel's failure to call certain witnesses at trial denied him effective assistance of counsel. "The decision whether to call witnesses is a matter of trial strategy." *Daniel, supra*. This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will this Court assess counsel's competence with the benefit of hindsight. *People v Garza*, 246 Mich App 251, 255; 631 NW2d 764 (2001). "In order to overcome the presumption of sound trial strategy, the defendant must show that his counsel's failure to call these witnesses deprived him of a substantial defense that would have affected the outcome of the proceeding." *Daniel, supra*.

Here, the record does not indicate who the purported witnesses are or how any of these witnesses would have benefited defendant's case, and defendant has not provided this Court with affidavits indicating what the proposed testimony of the additional witnesses would have been.² Furthermore, defendant was not deprived of a substantial defense because his trial counsel cross-examined the complainant and the prosecutor's other witnesses, attempting to attack their credibility while strengthening defendant's. Moreover, defendant's trial counsel presented a witness who testified in favor of defendant's version of the events, namely, that the complainant was in fact the aggressor, and defendant the victim, of the vehicle collisions. Thus, defendant has failed to overcome the presumption that his trial counsel's decision not to call those witnesses was sound trial strategy. *Davis, supra* at 369.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

² MCR 7.211(C)(1)(a)(ii) requires that a motion to remand must show "that development of a factual record is required for appellate consideration of the issue. A motion under this subrule must be supported by affidavit or offer of proof regarding the facts to be established at a hearing."