

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN PHILLIP PROPER,

Defendant-Appellant.

UNPUBLISHED

September 24, 1999

No. 210408

Tuscola Circuit Court

LC No. 97-007196 FH

Before: Whitbeck, P.J., and Saad and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions and sentences for three counts of third-degree criminal sexual conduct (CSC), MCL 750.520d; MSA 28.788(4). He was sentenced to seven- to fifteen-years' imprisonment. Defendant contends that he was denied the effective assistance of counsel and that he was denied a fair trial as a result of cumulative error on the part of his counsel and the lower court. We affirm.

When reviewing a claim of ineffective assistance of counsel, our review is limited to the facts contained in the record. *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987). The defendant must make a testimonial record in the trial court in connection with a motion for a new trial or an evidentiary hearing, *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973), unless the details of the alleged deficiency are apparent on the already-existing record, *People v Juarez*, 158 Mich App 66, 73; 404 NW2d 222 (1987). To prove ineffective assistance of counsel, defendant must first show that defense counsel performed below "an objective standard of reasonableness under prevailing professional norms" and "overcome a strong presumption that counsel's assistance constituted sound trial strategy." *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Second, he must "show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *Id.* at 687-688. Counsel's performance must be measured without the benefit of hindsight. *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995).

Here, defendant's arguments merely state conclusions and generalities. He argues that his trial counsel was ineffective for failing to raise appropriate objections, but does not describe the appropriate objections. He has not indicated what testimony warranted an objection or how any objection would

have affected the outcome of the case. In short, defendant has offered no intelligible argument to support his claim of ineffective assistance of counsel. An appellant must appropriately argue the merits of the issues he raises, and may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993); *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1998).

Defendant next argues that the cumulative effect of several errors below denied him a fair trial. In his brief, defendant lists eight instances of alleged error, some of which appear to relate to his earlier argument that he was denied effective assistance of counsel. Again, however, defendant primarily asserts error without explaining the error or alleging prejudice. Where defendant does cite the record, he fails to explain the error he claims can be found at the cited transcript page.¹

In addition to his general assertions of error, defendant appears to raise three *specific* arguments on appeal. First, he claims that his attorney was ineffective because he approved the prosecution's request to omit a jury instruction on the lesser included offense of fourth-degree CSC. However, a review of the record indicates that defense counsel attempted to request the instruction, at which time the trial court interrupted and agreed to give the instruction. The instruction for fourth-degree CSC was subsequently given to the jury. Because the instruction was given, we are unable to discern what prejudice defendant would like us to find from this alleged error. *People v Mitchell*, 454 Mich 145, 164; 560 NW2d 600 (1997); *People v Pickens*, 446 Mich 298, 314, 327; 512 NW2d 797 (1994).

Defendant also claims that his trial counsel failed to object to "the essentially meaningless voir dire conducted by the Circuit Judge in this matter." Again, defendant has not developed this argument, but suggests that the court abused its discretion and failed to comply with MCR 6.412(C) because it took only thirty-three minutes to select the jury. Defendant has provided no supporting authority for his contention that the effectiveness of voir dire may be determined by the amount of time spent in jury selection. Defendant does not indicate what additional inquiries the court should have made or what specific biases the jury may have had that affected the outcome of the trial. Because defendant failed to object at trial, failed to specify what was wrong with the court's conduct, and has failed to link his conviction to the court's allegedly improper conduct, there is no basis on which this Court may reverse the conviction. *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995); *People v White*, 168 Mich App 596, 604; 425 NW2d 193 (1988).

Finally, defendant claims that his trial counsel failed to sequester the witnesses. The sequestration of witnesses is within the discretion of the trial court. *Werthman v General Motors Corp*, 187 Mich App 238, 244; 466 NW2d 305 (1991); *People v Jehnsen*, 183 Mich App 305, 309; 454 NW2d 250 (1990). Defendant has not explained what impact sequestration would have had on the outcome of the trial, and there is no error apparent on the record. *People v Johnson*, 144 Mich App 125, 129-130; 373 NW2d 263 (1985). Thus, defendant has failed to show that he was denied the effective assistance of counsel.

Because we find no evidence of error and no evidence that defendant was denied a fair trial, his claim of cumulative error fails.

Affirmed.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Joel P. Hoekstra

¹ For example, defendant writes:

- c. Failure to properly interject objections during the course of the trial. (TR - 60, 66, 67, 73, 78, 84/85, 97, 101, 107/108, 145, 174/175).

Defendant leaves it to this Court to look up the relevant passages and figure out just what objection should have been offered at that point in the trial.