

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of David Carter, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

DAVID CARTER,

Respondent-Appellant.

UNPUBLISHED

January 24, 2003

No. 236439

Wayne Circuit Court

Juvenile Division

LC No. 99-375112

Before: Cooper, P.J., and Bandstra and Talbot, JJ.

MEMORANDUM.

Respondent appeals as of right his convictions for receiving and concealing stolen property with a value greater than \$1,000 but less than \$20,000, MCL 750.535(3)(a), carrying a concealed weapon, MCL 750.227, resisting and obstructing a police officer, MCL 750.479, and driving without a valid operator's license, MCL 257.301. Respondent was sentenced to probation. We affirm.

This case involves the theft of an automobile and a subsequent police stop. Respondent raises as his sole issue a claim that trial counsel was ineffective for failing to provide notice of an alibi witness pursuant to MCL 768.20(1) and to subpoena respondent's alibi witness for trial. He maintains that this witness "would have established a time line that would have made it impossible for the [respondent] to be at the scene of the car jacking," which would have supported his claim that he was present in the stolen automobile with a handgun solely as the result of gaining the upper hand on two men who had earlier tried to kidnap him.

To establish ineffective assistance of counsel, respondent must show (1) that his trial counsel's performance fell below an objective standard of reasonableness, and (2) that respondent was so prejudiced that he was denied a fair trial, i.e., that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). Respondent has failed to satisfy these requirements.

As noted by the prosecution, respondent does not name this alleged alibi witness in his appellate brief. Presumably he refers to his friend, from whose home he was walking when he

was allegedly stopped by the two strangers and kidnapped at gunpoint. However, during his trial testimony, respondent first named this individual as “James,” and then later as “Gene.” At trial, he could not remember Gene’s last name or his address. In addition, respondent has not provided an affidavit by this individual or other evidence to support his claim of error. Respondent has thus failed to establish a claim of ineffective assistance.

We affirm.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Michael J. Talbot