

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELLIOTT WENDEL TAYLOR,

Defendant-Appellant.

UNPUBLISHED

April 20, 2006

No. 259581

Wayne Circuit Court

LC No. 04-007461-01

Before: Murphy, P.J., and O’Connell and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Following a *Ginther*¹ hearing, the trial court denied defendant’s motion for new trial, in which he claimed ineffective assistance of counsel. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant reiterates his claim that his trial attorney provided him with ineffective assistance claim. We disagree. “To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance was deficient and that counsel’s deficient performance prejudiced the defense.” *People v Riley (After Remand)*, 468 Mich 135, 140; 659 NW2d 611 (2003). The complainant, who is the mother of defendant’s son, and her sister testified that defendant drove by complainant’s house and pointed a shotgun at her from the car window. When police found defendant, he was seated on the trunk of his car holding three shotgun shells in his hand, which he tossed into the grass. Defendant testified that he had spent the entire day at his niece’s house with his niece and her boyfriend and never drove his car. He asserted that he had picked up the shotgun shells from his niece’s front yard. No other witnesses testified on his behalf.

Defendant now claims that his trial counsel was ineffective because he failed to perform an adequate investigation and did not file notice of an alibi defense. He claims that his counsel failed to interview and subpoena witnesses who could have testified in support of his alibi

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

defense. However, defendant does not refute the *Ginther* hearing testimony of his trial attorney that defendant never responded to counsel's requests for the names of these alleged witnesses. Because he failed to provide his counsel with the names of any witnesses, defendant cannot now claim that his counsel was deficient for not interviewing or subpoenaing additional alibi witnesses. See *People v Herndon*, 98 Mich App 668, 673-674; 296 NW2d 333 (1980). Although a defendant is entitled to have "counsel prepare, investigate, and present all substantial defenses," he must show that he made a "good-faith effort to avail himself of this right and that the defense of which he was deprived was substantial." *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). In the case at hand, defendant failed to show that he made such an effort, *Herndon, supra*, and failed to present any testimony from the alleged alibi witnesses at his *Ginther* hearing. *Kelly, supra*. Without the testimony, we have no basis to determine whether defendant's alibi testimony would have been bolstered. *Id.*

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray