

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEON L. WILLIAMSON,

Defendant-Appellant.

UNPUBLISHED

February 24, 2004

No. 244279

Wayne Circuit Court

LC No. 01-009492

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

MEMORANDUM.

Defendant was charged with one count of first-degree criminal sexual conduct, MCL 750.520b(1)(a). Following a bench trial, the court found defendant guilty but mentally ill and sentenced him to fifty-one months to ten years in prison. We affirm.

Defendant’s sole claim on appeal is that trial counsel was ineffective for failing to zealously pursue an insanity defense. Because defendant failed to raise this claim below in a motion for a new trial or an evidentiary hearing, review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

To prevail on a claim of ineffective assistance of counsel, defendant must show that his counsel’s performance was objectively unreasonable and the representation was so prejudicial that he was deprived of a fair trial. To demonstrate prejudice, the defendant must show that, but for counsel’s error, there was a reasonable probability that the result of the proceedings would have been different. This Court presumes that counsel’s conduct fell within a wide range of reasonable professional assistance, and the defendant bears a heavy burden to overcome this presumption. [*People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001), *aff’d* 468 Mich 233 (2003) (citations omitted).]

While counsel may be ineffective for failing to present a meritorious insanity defense if the failure deprives the defendant of a reasonably likely chance of acquittal, *People v Hunt*, 170 Mich App 1, 13; 427 NW2d 907 (1988), it is clear from the record that counsel did pursue an insanity defense by seeking an independent evaluation from Dr. Steven Miller. “The fact that defense counsel’s strategy may not have worked does not constitute ineffective assistance of counsel.” *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). Although Miller did testify that he could not find defendant legally insane in part because

defendant denied committing the offense, defendant's denial of responsibility to Miller was consistent with his trial testimony that he did not commit the offense and was coerced into giving a false statement to the police. In addition, there is nothing in the record to suggest that, but for the fact that defendant denied responsibility, Miller would have found him legally insane. Miller testified that one obstacle to finding defendant legally insane was the fact that he had no information about defendant's mental state at the time he committed the offense, and there is nothing in the record to show that defendant's mental state at that time was such as to render him legally insane. Because there are no errors apparent on the record, defendant's argument that he was denied ineffective assistance of trial counsel is without merit. *People v Pratt*, 254 Mich App 425, 430; 656 NW2d 866 (2002).

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood