

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM JAY OWEN,

Defendant-Appellant.

UNPUBLISHED

August 2, 1996

No. 176256

LC No. 93-017551

Before: Gribbs, P.J., and Hoekstra and C.H. Stark,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking and entering a dwelling with intent to commit larceny, MCL 750.110; MSA 28.305. Defendant then pleaded guilty to being an habitual offender, third offense, MCL 769.11; MSA 28.1083, and was sentenced to five to twenty years' imprisonment. Defendant now appeals as of right, and we affirm.

Defendant first argues that he was denied a fair trial by the prosecution's failure to fully apprise the jury of the consideration received by a key prosecution witness, who was also defendant's accomplice. We disagree. While defendant is correct that a witness's motivation for testifying is relevant and that a defendant is entitled to have the jury consider any facts which may have influenced the witness's testimony, *People v Minor*, 213 Mich App 682, 685; 541 NW2d 576 (1995), here the existence of an agreement to testify and the terms of the agreement were clearly disclosed to the jury. Although defendant now argues on appeal that further details regarding the bargain should have been disclosed, he did not seek to elicit any further information below. Accordingly, defendant was not denied the opportunity to present this information, and defendant was not denied a fair trial.

Defendant next argues that statements made by the prosecutor during closing argument regarding the prosecutor's belief in defendant's guilt denied him a fair trial. However, defendant did not object to these remarks at trial, and, absent objection at trial, appellate review is precluded unless an objection could not have cured the error or a failure to review would result in a miscarriage of justice.

* Circuit judge, sitting on the Court of Appeals by assignment.

People v Stanaway, 446 Mich 643,687; 521 NW2d 557 (1994). We have reviewed the allegedly improper remarks and conclude that they were not improper, as the prosecutor clearly tied his belief in defendant's guilt to the evidence presented. *People v Humphreys*, 24 Mich App 411, 414; 180 NW2d 328 (1970). Because the remark was not improper, our failure to review this issue further will not result in a miscarriage of justice.

Defendant's third argument involves the trial court's decision to value the motor stolen by defendant at \$363.99 for purposes of restitution. Defendant argues that because the motor was three years old and he was able to sell it for only \$60.00, restitution in an amount equal to the cost of a new motor was improper. We disagree. Here, the \$363.99 ordered as restitution for a new trolling motor represented the value of the motor to the victim at the time it was stolen, as the victim would have had to spend that amount to replace the motor. The trial court's valuation of the motor was based upon the evidence, and accordingly, we find the valuation to be reasonable. *People v Guajardo*, 213 Mich App 198; 539 NW2d 570 (1995).

Defendant also argues that he is entitled to an evidentiary hearing and a new trial because the police intentionally placed an informant in defendant's cell knowing that the informant would elicit information from defendant in violation of his right to counsel. Defendant did not challenge the witness's testimony below, therefore this issue is reviewed only to the extent that a substantial right of defendant's was affected. MRE 103; *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995). Here, defendant has not shown that a substantial right was affected by the admission of his cell-mate's testimony. Furthermore, defendant has not offered any substantiation for his claim that the cell-mate was a government agent or informant, or that the government had used his cell-mate to deliberately elicit a confession from defendant.

Lastly, defendant argues that he was denied effective assistance of counsel. Because defendant did not move for a new trial or an evidentiary hearing on this basis, our review is limited to errors apparent on the record. *Barclay, supra* at 672. We have reviewed defendant's claims of error and find that the actions with which he takes issue, his counsel's failure to seek suppression of his cell-mates testimony, his counsel's failure to investigate and call witnesses, his counsel's failure to object to the above-mentioned remarks of the prosecutor, and a remark by his counsel involving defendant's alleged accomplice, and find that defendant was not deprived of the effective assistance of counsel. From the record it appears that the actions defendant finds offensive involved mainly trial strategy and did not so prejudice defendant that he was deprived of a fair trial. *Id.*

Affirmed.

/s/ Roman S. Gribbs

/s/ Joel P. Hoekstra

/s/ Charles H. Stark