

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD ALEXANDER CAMPBELL,

Defendant-Appellant.

UNPUBLISHED

September 19, 2024

Nos. 362588; 362589

Kent Circuit Court

LC Nos. 20-004992-FH; 20-005835-FH

Before: N. P. HOOD, P.J., and O’BRIEN and REDFORD, JJ.

REDFORD, J. (*concurring in part and dissenting in part*).

I concur with the majority’s decision to affirm the convictions and sentence in Docket No. 362589. However, I respectfully dissent from the majority’s decision to vacate and remand for a new trial in Docket No. 362588.

Trial counsel was not ineffective for failing to object to joinder of these two cases. Effective assistance of counsel is presumed, and defendant bears a heavy burden of proving otherwise. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002). “To prevail on a claim of ineffective assistance, a defendant must, at a minimum, show that (1) counsel’s performance was below an objective standard of reasonableness and (2) a reasonable probability that the outcome of the proceeding would have been different but for trial counsel’s errors.” *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003).

“Whether joinder is appropriate is a mixed question of fact and law.” *People v Gaines*, 306 Mich App 289, 304; 856 NW2d 222 (2014) “To determine whether joinder is permissible, a trial court must first find the relevant facts and then must decide whether those facts constitute ‘related’ offenses for which joinder is appropriate.” *Id.* (quotation marks and citation omitted). This Court reviews the trial court’s factual findings for clear error and its interpretation of a court rule de novo. *Id.* “However, the ultimate decision on permissive joinder of related charges lies firmly within the discretion of trial courts.” *Id.* (quotation marks and citation omitted).

Offenses are related if they consist of the “same conduct or transaction,” “a series of connected acts,” or “a series of acts constituting parts of a single scheme or plan.” MCR 6.120(B)(1)(a)-(c). Joinder is appropriate when the counts are logically related. *People v*

Williams, 483 Mich 226, 237; 769 NW2d 605 (2009). If the offenses are not related as defined in Subrule (B)(1), MCR 6.120(C) mandates severance on a defendant's motion.

A review of the postjudgment motion hearing and the trial court's opinion and order denying defendant postjudgment relief reveals that, had a motion for severance been made, it would not have been successful. The trial court carefully and thoughtfully considered the claims being made in this appeal, and rejected them as unfounded in fact and law. These conclusions were not erroneous in my estimation. Considering that defendant's assault of Taylor and the ensuing altercation and shooting as defendant drove away resulted in police officers finding the abandoned vehicle containing the red duffel bag filled with controlled substances just minutes later, the events could properly be joined as "a series of connected acts." MCR 6.120(B)(1)(b). Trial counsel was not ineffective for failing to advance a meritless argument. See *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

Moreover, defendant cannot demonstrate that, but for the alleged ineffective nature of trial counsel's representation, there is a reasonable probability that a different outcome would have occurred. *Ackerman*, 257 Mich App at 455. Based on the record before us, we know, had a motion to sever been made, it would have been denied because the trial court denied a posttrial motion on the same grounds. This denial was not clearly erroneous. As a result, defendant cannot show ineffective assistance of counsel.

I would affirm defendant's convictions in Docket No. 362588.

/s/ James Robert Redford