

Jason Clark (“Clark”) was convicted in Marion Superior Court of murder, Class D felony criminal recklessness, and Class A misdemeanor carrying a handgun without a license. Clark appeals and argues that the State presented insufficient evidence to support his convictions of murder and carrying a handgun without a license. We affirm.

Facts and Procedural History

On the evening of November 16, 2007, Willie Lawrence (“Lawrence”) and Dwight Lasley (“Lasley”) were watching television together at Lawrence’s home. They were later joined by Arthur Miles (“Miles”) and Carlton Jenkins (“Jenkins”). Miles told Lawrence that he was going to beat up Clark and asked Lawrence to come along to “watch his back.” Tr. p. 203. All four men then got into Miles’s car and drove to the Lamplighter Apartments to find Clark. When they arrived at the apartment complex, all four men exited the vehicle and walked around the side of one of the buildings, where they encountered Clark, Cantrell Byrd (“Byrd”), and another man. Clark was holding a handgun.

Clark and Miles began arguing, and Clark put the handgun in Miles’s face and told Miles that he would kill him. Clark then began to argue with Lawrence. Clark then raised the gun, pointed it at Lawrence, and shot him in the chest. Immediately thereafter, Lasley was shot in the shoulder and hip by someone other than Clark. Lasley fell to the ground and heard at least five more gunshots. Lawrence ultimately died of multiple gunshot wounds, including one to the chest. Lasley survived.

As a result of these events, on November 21, 2007, the State charged Clark with murder, Class D felony criminal recklessness, and Class A misdemeanor carrying a handgun without a license. The State also charged Byrd with attempted murder for allegedly shooting Lasley, criminal recklessness, and carrying a handgun without a license. On January 18, 2008, the trial court granted the State's motion to join Clark's and Byrd's trials. The joint trial commenced on August 25, 2008, at which Lasley testified that he saw Clark shoot Lawrence. At the conclusion of the evidence, the jury found Clark guilty as charged. Clark now appeals.

Discussion and Decision

Clark argues that the State presented insufficient evidence to support his convictions for murder and carrying a handgun without a license.¹ In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Atteberry v. State, 911 N.E.2d 601, 609 (Ind. Ct. App. 2009). Instead, we consider only the evidence supporting the conviction and the reasonable inferences to be drawn therefrom. Id. If there is substantial evidence of

¹ Clark also argues that he was deprived of counsel at his sentencing hearing in violation of his Sixth Amendment rights. But Clark does not allege that he did not have counsel present at his sentencing hearing; instead, he argues that counsel's performance was so deficient that he was effectively deprived of counsel. However, in his brief Clark indicates that he does not wish to waive any claims of ineffective assistance of counsel for future post-conviction relief proceedings. See Woods v. State, 701 N.E.2d 1208, 1220 (Ind. 1998) (holding that where ineffective assistance of trial counsel is raised on direct appeal, the issue is foreclosed from collateral review in post-conviction relief proceedings). To that end, he insists that this claim is not one of ineffective assistance of counsel and asks that if we interpret his argument as such, we decline to address it.

Clark's argument that his trial counsel's performance during sentencing was so deficient that Clark was effectively deprived of representation in violation of the Sixth Amendment is the very essence of a claim of ineffective assistance of counsel. See Wrinkles v. State, 749 N.E.2d 1178, 1188 (Ind. 2001) (to support a claim of ineffective assistance of counsel, a defendant must show that "counsel's representation fell below an objective standard of reasonableness and that counsel made errors so serious that counsel was not functioning as 'counsel' guaranteed to the defendant by the Sixth Amendment"). Because Clark's argument in this regard cannot be interpreted as anything other than a claim of ineffective assistance of counsel, we decline to address it pursuant to his request.

probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt, then the verdict will not be disturbed. Baumgartner v. State, 891 N.E.2d 1131, 1137 (Ind. Ct. App. 2008).

To establish that Clark committed murder, the State was required to prove that Clark knowingly or intentionally killed Lawrence. See Ind. Code § 35-42-1-1 (2004). To establish that Clark committed Class A misdemeanor carrying a handgun without a license, the State was required to prove that Clark “carr[ied] a handgun in any vehicle or on or about [his] body . . . without a license[.]”² See Ind. Code § 35-47-2-1 (2004). On appeal, Clark argues that the State failed to prove that he was the person who shot and killed Lawrence or that he possessed a gun. In support of this assertion, Clark argues that Lasley’s testimony was not credible and directs our attention to other, allegedly contradictory evidence.

Clark’s arguments in this regard ignore our standard of review and are blatant requests for this court to reweigh the evidence and judge the credibility of witnesses, which we will not do on appeal. Lasley was an eyewitness to the shooting; he testified that Clark pointed a gun at Lawrence and shot him in the chest. Further evidence established that Lawrence died of multiple gunshot wounds, including one to the chest.

² Proof that a defendant does not possess a valid license is not an element of the offense. Deshazier v. State, 877 N.E.2d 200, 204 n.4 (Ind. Ct. App. 2007). Rather, once the State proves that a defendant carried a handgun on or about his person, away from his dwelling or business, the burden shifts to the defendant to demonstrate that he possessed a valid license. Id.; Harris v. State, 716 N.E.2d 406, 411 (Ind. 1999).

From this evidence, the jury could conclude that Clark was guilty of both murder and carrying a handgun without a license.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.