

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND HUDGINS,

Defendant-Appellant.

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UNPUBLISHED  
October 11, 1996

No. 175403  
LC No. 94-000540

Before: O'Connell, P.J., and Gribbs, and T. P. Pickard,\* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession of less than 25 grams of cocaine, MCL 333.7403; MSA 14.14(7403). He subsequently pled guilty to habitual offender, third offense, MCL 769.11; MSA 28.183. Defendant was sentenced to a term of 1-1/2 to 8 years' imprisonment. We affirm.

Detroit Police Officers James Suchoski and Mark Perttunen pulled over defendant's automobile on December 30, 1993 in order to place defendant under arrest for outstanding warrants. At defendant's request, the officers permitted him to retrieve his coat from the car and put it on. Officer Suchoski patted down defendant and found ten small plastic bags of crack cocaine in the coat.

At trial, both police officers testified that defendant retrieved the coat from the car. However, defendant testified that the coat was handed to him by a female passenger in the car, and that she had either given him the wrong jacket or slipped drugs in the jacket without his knowledge. The trial judge gave credence to the officers' account and found defendant guilty of the possession charge.

Defendant challenges the sufficiency of the evidence with regard to the possession conviction. The sufficiency of the evidence is to be evaluated in the light most favorable to the prosecution. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). The test is whether a rational trier of fact could find every element of the crime proven beyond a reasonable doubt. *Id.* Resolving credibility

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

disputes is within the exclusive province of the trier of fact. *People v Herbert*, 444 Mich 466, 474; 511 NW2d 466 (1993); *People v Vaughn* 186 Mich App 376, 380; 465 NW2d 365 (1990). Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). A reasonable trier of fact could have inferred from the officers' testimony that defendant retrieved his own jacket from the car, and that he was responsible for drugs being concealed in the jacket. The evidence was therefore sufficient.

In his second issue, defendant argues that he should not have been required to support the habitual offender guilty plea by producing evidence against his own interest. Because of discrepancies between the dates and the case numbers of defendant's prior offenses, the trial court verbally questioned defendant about his prior convictions and accepted defendant's plea based on this information. He also argues that he should have been given the opportunity to question the constitutional validity of prior convictions. We need not review this as defendant did not move for withdrawal of his guilty plea. He therefore failed to preserve this issue in accordance with MCR 6.311(C).

Next, defendant argues that the trial court failed to question him regarding the voluntariness of his habitual offender plea as required by MCR 6.302. Defendant, however, made no motion for withdrawal of his guilty plea and therefore failed to comply with the preservation requirements of MCR 6.311(C). This Court will not vacate an habitual offender plea on the ground that the trial judge failed to comply with MCR 6.302 unless the defendant has preserved the issue. *People v Gaines*, 198 Mich App 130, 131-132; 497 NW2d 210 (1993).

Finally, defendant seeks relief on the basis of ineffective assistance of counsel. A defendant claiming ineffective assistance of counsel must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). Trial counsel is presumed to have provided effective assistance. *People v Juarez*, 158 Mich App 66, 73; 404 NW2d 222 (1987). This presumption can only be overcome by a showing of counsel's failure to perform an essential duty which was prejudicial to the defendant. *Id.* Defendant carries the burden of proof. *Id.* This Court's review is limited to errors which are apparent on the record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994).

Defendant's ineffective assistance argument is four-fold. First, defendant argues that defense counsel should have called two women who were present the night of the arrest to testify on his behalf. We find no error. The record indicates that only one woman was present the night of his arrest. The woman who was present was not in a position to give exculpatory evidence unless she incriminated herself by claiming responsibility for the drugs. Since there is no indication that she would have given favorable testimony, counsel's failure to call her does not constitute ineffective assistance of counsel. Second, defendant argues that defense counsel violated his rights by eliciting from defendant incriminating statements concerning defendant's prior convictions. However, the record indicates that the trial court, and not defense counsel elicited these statements. Third, defendant argues that defense

counsel improperly allowed sentencing to proceed when the prosecutor made no proper record of defendant's prior convictions. The record, however, indicates that the trial court properly found a factual basis for the habitual offender plea by questioning defendant. Fourth, defendant claims he was prejudiced by his counsel's alleged "connection" with officer Suchoski. The only information presented on this alleged conflict of interest is in the affidavit defendant submitted with his motion to remand. In that motion defendant admitted to having perjured himself at trial and sought a remand for the purpose of developing a testimonial record of his own perjury. This Court denied defendant's motion for a *Ginther*<sup>1</sup> hearing. This Court may not consider allegations that are not of record in considering this appeal. *Hurst, supra*, at 641. Defendant has therefore failed to rebut the presumption that he received ineffective assistance of counsel.

Affirmed.

/s/ Peter D. O'Connell

/s/ Roman S. Gibbs

/s/ Timothy P. Pickard

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