

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY EUGENE COMPTON,

Defendant-Appellant.

UNPUBLISHED

November 15, 1996

No. 180843

LC No. 94-036952-FH

Before: Gribbs, P.J., and Markey and T.G. Kavanagh,* JJ.

PER CURIAM.

Defendant was charged with conspiracy to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and conspiracy to deliver marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c). The jury convicted defendant of conspiracy to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), but it could not reach a verdict on the conspiracy to deliver marijuana. Later, defendant pleaded no contest to a charge of conspiracy to possess marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). The trial court sentenced defendant to four-to-twenty years' imprisonment on the cocaine charge and twelve months in the county jail on the marijuana charge. Defendant claims his appeal of right from the cocaine conviction and sentence. We affirm.

Defendant argues that the prosecution improperly introduced evidence concerning the sentence that defendant's mother had served for a prior forgery conviction. We note that this issue is unpreserved because defendant failed to object to the introduction of this evidence. *People v Dowdy*, 211 Mich App 562, 570; 536 NW2d 794 (1995). Nevertheless, we may still review this issue because it is a matter of law and all the facts for the issue's resolution are before us. See, e.g., *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994).

It is improper to impeach a defendant with the details of a sentence served in a prior conviction. *People v Lindberg*, 162 Mich App 226, 234; 412 NW2d 272 (1987). This rule is also applicable to the defendant's witnesses. *People v Allen*, 429 Mich 558, 606-607; 420 NW2d 499 (1988).

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

Therefore, we find that it was improper for the prosecution to impeach defendant's witness with the details of her sentence for the prior forgery conviction. We will not, however, reverse a defendant's conviction in such situations unless the error prejudiced the defendant. MCL 769.26; MSA 28.1096. An error is harmless if it neither had an effect on the verdict nor was offensive to the maintenance of a sound judicial process. *People v Minor*, 213 Mich App 682, 685-686; 541 NW2d 576 (1995). Here, we believe the error was harmless because it had neither of these traits. *Id.* Although most of the improper questioning involved whether the witness used or was familiar with cocaine and marijuana, the witness' proper testimony refuted any allegations that her son ever grew marijuana in their basement. The jury did not convict defendant of the marijuana charge; thus, the improper testimony obviously had no impact on the verdict.

Next, defendant argues that the prosecutor improperly commented during closing arguments upon the evidence concerning his mother's prior conviction and sentence. At trial, defendant objected on the ground that the prosecution's comment was a mischaracterization of the witness' testimony. Notwithstanding the objection, this issue is unpreserved because the objection was not based on the same grounds as those put forth on appeal. *People v Lino (After Remand)*, 213 Mich App 89, 94; 539 NW2d 545 (1995). Appellate review is precluded unless any prejudicial effect could not have been cured by a cautionary instruction and the failure to review the issue would result in a miscarriage of justice. *People v Warren (After Remand)*, 200 Mich App 586, 589; 504 NW2d 907 (1993). Here, we find that no miscarriage of justice occurred because the prosecution's remark was a proper response to defendant's own argument to the jury. *People v DeLisle*, 202 Mich App 658, 671; 509 NW2d 885 (1993).

Last, defendant argues that his sentence was disproportionate and that it was based on erroneous factual assumptions made by the trial court. We have reviewed the record and find that assumptions were not erroneous and were properly relied on by the trial court. We further find that defendant's sentence is proportionate. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Jane E. Markey
/s/ Roman S. Gribbs
/s/ Thomas Giles Kavanagh