

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUANE ALLEN METCALF,

Defendant-Appellant.

UNPUBLISHED

April 1, 1997

No. 185824

Ottawa Circuit Court

LC No. 95-018577-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to operating a motor vehicle while under the influence of intoxicating liquor, third offense, MCL 257.625(1) and (7)(d); MSA 9.2325(1) and (7)(d), and was sentenced to three years' probation. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Absent a showing that prima facie proof could have been produced to establish that defendant's Florida conviction for driving under the influence of intoxicating liquor was obtained in violation of his right to counsel, *People v Carpentier*, 446 Mich 19, 31-32; 521 NW2d 195 (1994); *People v Moore*, 391 Mich 426, 440-441; 216 NW2d 770 (1974), defense counsel's failure to mount a challenge to this conviction in the trial court did not constitute ineffective assistance. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994); *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Affirmed.

/s/ Daniel F. Walsh
/s/ Robert P. Griffin
/s/ Walter P. Cynar