

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDGAR GLOVER,

Defendant-Appellant.

UNPUBLISHED

July 8, 1997

No. 192684

Recorder's Court

LC No. 95-009441-01

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction in the Recorder's Court for the City of Detroit of possession of less than 25 grams of cocaine. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant claims that he was deprived of the effective assistance of counsel at trial because, first, counsel produced, as the sole defense witness, a codefendant, who had previously pled guilty to the same crime, who when he appeared to testify was under the influence of crack cocaine. Defendant's appellate brief fails to explain how trial counsel could have prevented the witness, an acknowledged drug abuser, from becoming intoxicated or how not presenting the witness at all would have benefited the defense. Defendant has failed to show that he was prejudiced by any derelictions in counsel's performance, since matters complained of were outside counsel's control. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defendant's remaining contention is that it was ineffective assistance of counsel not to call defendant as a witness in his own behalf. Defendant conveniently did not request a *Ginther* hearing in the trial court to explore this issue, and the record thus fails to reveal either that defendant could have offered exculpatory testimony in his own defense or that counsel could have permitted defendant to so testify. *Nix v Whiteside*, 475 US 157; 106 S Ct 988; 89 L Ed 2d 123 (1986); *People v LaVearn*, 448 Mich 207, 215; 520 NW2d 721 (1995). On this record, therefore, counsel's decision not to call defendant as a witness is a matter of trial strategy and does not

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

constitute ineffective assistance of counsel. *People v Alderete*, 132 Mich App 351; 347 NW2d 229 (1984).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Donald A. Teeple