

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEVIRNE DUKE SANSBURY,

Defendant-Appellant.

UNPUBLISHED
October 31, 1997

No. 187093
Macomb Circuit Court
LC No. 94-002569 FH

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Defendant was convicted by jury of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(1), (2)(a)(iv); MSA 14.15(7401)(1), (2)(a)(iv), and possession with intent to deliver marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c). He was sentenced to serve enhanced prison terms of six to forty years and one to eight years, respectively, reflecting defendant's status as a second drug offender, MCL 333.7413; MSA 14.14(7413). Defendant appeals as of right. We affirm.

Defendant argues that trial counsel rendered ineffective assistance by failing to file a pretrial motion to suppress the cocaine and marijuana seized from defendant's vehicle. On the basis of the totality of the circumstances, we conclude that the investigatory stop of defendant's vehicle was supported by the necessary reasonable suspicion that defendant and his passenger were engaged in criminal wrongdoing. *People v Shields*, 200 Mich App 554, 555-557; 504 NW2d 711 (1993); *People v Sinistaj*, 184 Mich App 191, 195-198; 457 NW2d 36 (1990.) Additionally, under these circumstances, the initial seizure of the cocaine was justified under the plain view doctrine and the subsequent seizure of the additional cocaine and marijuana was justified under the search incident to arrest exception. *People v Champion*, 452 Mich 92, 101-103, 115-117; 549 NW2d 849 (1996). Accordingly, counsel was not ineffective for failing to move to suppress where the motion would have been futile. *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991).

Defendant also argues that counsel was ineffective for eliciting testimony that his codefendant had pleaded guilty to a possession with intent to deliver cocaine charge and received a sentence of

lifetime probation. On the record before us, we find that trial counsel's decision to

elicit the challenged testimony constituted reasonable trial strategy. *People v Hoyt*, 185 Mich App 531, 537; 462 NW2d 793 (1990). This Court does not second guess a defense counsel's trial strategy. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987). Moreover, the fact that the strategy failed to work does not render counsel's assistance ineffective. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996).

Finally, defendant is not entitled to resentencing. The trial court retained jurisdiction to sentence defendant where the court announced its decision to modify the initially orally announced sentence before defendant was remanded to the jail to await execution of the sentence. *People v Bingham*, 144 Mich App 152, 158-159; 375 NW2d 370 (1984).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gribbs