

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL WHITE, a/k/a CARL SMITH,

Defendant-Appellant.

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UNPUBLISHED

March 3, 1998

No. 198844

Recorder's Court

LC No. 96-000772

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison\*, JJ.

MEMORANDUM.

In a bench trial, defendant was convicted of possession of cocaine under 25 grams, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). On being adjudicated a fourth offender MCL 769.12; MSA 28.1084, he received an enhanced sentence of two to fifteen years' imprisonment. On this appeal of right, he contends that he was deprived of the effective assistance of trial counsel due to the failure to challenge the imposition of an enhanced sentence, and that in any event he should not have been sentenced as a fourth offender. We affirm; this appeal is being decided without oral argument pursuant to MCR 7.214(E).

Although defendant has failed to supply this Court with transcripts of the relevant proceedings, the lower court record does contain a notation indicating that on May 10, 1996, defendant's plea of guilty to the original charge of possession with intent to deliver less than fifty grams of cocaine, § 7401(2)(a)(iv) of the Public Health Code, was withdrawn. Apparently, as part of a plea bargain the prosecutor agreed not to pursue sentence enhancement in exchange for defendant's guilty plea, but defendant's withdrawal of his plea terminated any such bargain. There is no actual order of dismissal regarding the notice of intent to seek enhanced sentence anywhere in the lower court record. As that notice was timely filed, there is no cognizable legal basis on which defendant's trial counsel could have sought dismissal of the prosecution's effort to seek an enhanced sentence. MCL 769.13; MSA 28.1085.

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

Additionally, the prior convictions iterated in the notice of intent filed by the prosecution correspond with defendant's prior criminal record as detailed in the presentence report, the

accuracy of which defendant never challenged. *People v Lawrence*, 206 Mich App 378, 380; 522 NW2d 654 (1994). Thus, the record fails to indicate that any grounds existed for either avoiding an enhanced sentence entirely or limiting the degree of enhancement below that permitted for fourth offenders. Defendant's trial counsel cannot be deemed ineffective for failing to pursue objections without substantive legal basis or realistic prospects of improving defendant's legal position. *People v Pickens*, 446 Mich 298, 327; 521 NW2d 797 (1994).

Affirmed.

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison