

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVIN LAVELL JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

March 13, 1998

No. 199229

Muskegon Circuit Court

LC No. 96-139118-FH

Before: Markey, P.J., Michael J. Kelly and Whitbeck, JJ.

MEMORANDUM.

Defendant was convicted as a second habitual offender of possession of less than 25 grams of cocaine, contrary to MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). Defendant was sentenced to three to six years' imprisonment and now appeals as of right. We affirm.

This case arises out of an incident in which police officers conducted a traffic stop of the car in which defendant was riding as a passenger. Following the arrest of both the driver and defendant, the area was searched. The officers found a small container on the ground with several rocks of crack cocaine inside and defendant was charged with possession of the cocaine.

Defendant raises several claims of ineffective assistance of counsel, but did not move for a *Ginther* hearing or a motion for a new trial, so we are therefore limited to the record. Alternatively, defendant requests that we remand for an evidentiary hearing on the issue and on the question of defendant's mental competency. Defendant's assertion on the incompetency question is not supported by either an affidavit or an offer of proof and does not meet the requirements of MCR 7.211(C)(1). On review of the record we find no basis on which a finding of ineffective assistance of counsel can be made. We decline to remand as defendant has failed to convince this Court that a remand is necessary. See, *People v Whyte*, 165 Mich App 409; 418 NW2d 484 (1988).

Defendant next claims that his sentence is disproportionate, but defendant was sentenced as a habitual offender, and there is no basis for finding an abuse of discretion. See *People v Edgett*, 220 Mich App 686; 560 NW2d 360 (1996).

Affirmed.

/s/ Jane E. Markey

/s/ Michael J. Kelly

/s/ William C. Whitbeck