

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM MARSHALL MOSLEY, a/k/a WILLIAM  
MARSHALL MOSELEY,

Defendant-Appellant.

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UNPUBLISHED

May 8, 1998

Nos. 198874; 200229

Calhoun Circuit Court

LC Nos. 96-000268 FH

96-000269 FH

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka\*, JJ.

PER CURIAM.

In Docket No. 198874, defendant appeals as of right from a jury conviction of delivery of less than fifty grams of cocaine, MCL 333.7401(1) and (2)(a)(iv); MSA 14.15(7401)(1) and (2)(a)(iv), and a sentence of two to twenty years' imprisonment. In Docket No. 200229, defendant appeals as of right from a jury conviction of delivery of less than fifty grams of cocaine and a sentence of three to twenty years' imprisonment. We affirm. These cases are being decided without oral argument pursuant to MCR 7.214(E).

In Docket No. 198874, defendant is precluded from challenging the trial court's ruling with regard to defense counsel's motion to withdraw where defendant twice indicated on the record that he did not wish new counsel and where defense counsel effectively withdrew her motion. *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995). In Docket No. 200229, defendant has failed to demonstrate that good cause existed to remove defense counsel from her representation of defendant and to appoint substitute counsel. *People v Ginther*, 390 Mich 436, 441-442; 212 NW2d 922 (1973); *In re Conley*, 216 Mich App 41, 46; 549 NW2d 353 (1996); *People v Morgan*, 144 Mich App 399, 401; 375 NW2d 757 (1985).

In both Docket Nos. 198874 and 200229, defendant failed to make a testimonial record in the trial court in conjunction with a motion for a new trial or an evidentiary hearing and, therefore, appellate

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

review of his claims of ineffective assistance of counsel is limited to the facts contained in the respective records. *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987).

Defense counsel was not ineffective for failing to move to dismiss these cases on the ground of entrapment where neither record establishes the existence of a viable defense of entrapment. Defense counsel cannot be deemed ineffective for failing to make a futile motion. *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991). Similarly, any motion to dismiss based on a violation of a Sixth Amendment right to counsel would have been futile in light of the fact that this right only attaches at or after the initiation of adversarial judiciary proceedings against a defendant. *People v Anderson (After Remand)*, 446 Mich 392, 402; 521 NW2d 538 (1994); *Gist, supra*. A motion for mistrial based on a claim that a police officer coerced a potential defense witness into withholding exculpatory evidence also would have been futile where the record contains no support for the claim. *Gist, supra*.

Defendant has abandoned appellate consideration of his claim that counsel was ineffective because she failed to move to exclude any testimonial reference to Cheryl Karaba by failing to provide citation to authority supporting his claim that the prosecutor was required to produce Karaba or that the remedy for the failure to produce Karaba was the exclusion of any testimonial reference to Karaba. *People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995).

Defendant's claim in Docket No. 198874 that a delay in his arrest severely compromised his ability to present a defense is not properly before us for review because the issue was not set forth in the statement of the questions presented. *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990).

With regard to defendant's challenge to the proportionality of his consecutive sentences, we conclude that defendant has failed to rebut the presumption of proportionality that attends these sentences which fall within their respective sentencing guidelines ranges. *People v Miles*, 454 Mich 90, 95; 559 NW2d 299 (1997); *People v Bailey (On Remand)*, 218 Mich App 645, 647; 554 NW2d 391 (1996).

We affirm.

/s/ Richard A. Bandstra  
/s/ Barbara B. MacKenzie  
/s/ Nick O. Holowka