

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE DARCELL HOOD,

Defendant-Appellant.

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UNPUBLISHED

April 25, 2000

No. 210483

Genesee Circuit Court

LC No. 97-001481-FH

Before: Kelly, P.J., and Holbrook, Jr., and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), for which he was sentenced as a third habitual offender, MCL 769.11; MSA 28.1083, to twenty-four to ninety-six months' imprisonment. We affirm.

Defendant's sole contention on appeal is that his attorney was ineffective because he failed to advise the court at sentencing of relevant information concerning the fact his sentence was required to run consecutive to the remaining portion of an earlier sentence he was serving when he violated his parole.

The general rule is that effective assistance of counsel is presumed and the defendant bears a heavy burden of proving otherwise. *People v Eloby (After Remand)*, 215 Mich App 472, 476; 547 NW2d 48 (1996). To establish ineffective assistance of counsel, defendant must show that counsel's representation fell below an objective standard of reasonableness and he was prejudiced by the deficient representation, i.e., that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994); *People v Price*, 214 Mich App 538, 547; 543 NW2d 49 (1995).

The presentence report indicated defendant's sentence would have to run consecutively to defendant's prior sentence of thirty to forty-eight months and defendant advised the court at sentencing that his parole had been revoked and he had at least a year to serve on his prior sentence. More significantly, the judge stated at the hearing on defendant's motion for resentencing that he was aware of

the consecutive sentencing statute, MCL 768.7a(2); MSA 28.1030(1)(2), and took it into account in fashioning an appropriate sentence. The court also stated that “the showing of ineffective assistance of counsel is not sufficient to cause me to change the sentence.” Therefore, even if counsel were deficient for failing to advise the court of all relevant information at sentencing, it is clear from the court’s statements at the hearing on the motion for resentencing that any alleged deficiency did not affect the trial court’s sentencing decision.<sup>1</sup> Thus, defendant has not established the requisite prejudice to prevail on a claim of ineffective assistance of counsel.

Affirmed.

/s/ Michael J. Kelly

/s/ Donald E. Holbrook, Jr.

/s/ Richard Allen Griffin

<sup>1</sup> Defendant expressly states in his brief that he is not claiming the sentence itself is disproportionately harsh.