

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ABDUL HAKIM MUADIK WILSON,

Defendant-Appellant.

UNPUBLISHED

April 12, 2002

No. 229656

Oakland Circuit Court

LC No. 99-167951-FH

Before: K.F. Kelly, P.J. and Doctoroff and Cavanagh, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), possession of a firearm during the commission of a felony, second offense, MCL 750.227b, carrying a concealed weapon, MCL 750.227, and felon in possession of a firearm, MCL 750.224f. He was sentenced as an habitual offender, second offense, MCL 769.10, to prison terms of one to thirty years' for the drug conviction, five years' for the felony-firearm conviction, and one to seven and one-half years' for the two other convictions. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that trial counsel was ineffective because he failed to move to suppress the evidence resulting from a search. Because defendant failed to raise this claim below in a motion for a new trial or an evidentiary hearing, review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). Here, the record reflects that trial counsel considered filing a motion to suppress, but determined it was not warranted by existing law. We agree.

Although the officers approached defendant's car to investigate, that did not mean that they were conducting an investigatory stop requiring reasonable suspicion of criminal activity. Approaching a sleeping person in a car to see if he is in need of assistance is not a seizure. *People v Shankle*, 227 Mich App 690, 693, 697; 577 NW2d 471 (1998). When one officer knocked on the window and defendant reacted, he exposed suspected crack cocaine packaged in a manner in which that drug is often found. At that point, the officers had probable cause to believe that defendant was in possession of a controlled substance and could arrest him without a warrant. MCL 764.15(1)(d). Incident to that arrest, the officers could search the passenger compartment of defendant's car and any containers found therein without a warrant. *People v Eaton*, 241 Mich App 459, 463-464; 617 NW2d 363 (2000). Therefore, the seizure of the drugs

and weapon was valid and counsel was not ineffective when he failed to move to suppress the evidence.

Defendant next contends that the evidence was insufficient to support the conviction of possession with intent to deliver cocaine. In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of the crimes charged are (1) defendant knowingly possessed a controlled substance; (2) defendant intended to deliver the substance to someone else; (3) the substance possessed was cocaine, and (4) the substance was in a mixture that weighed less than fifty grams. See *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998). Actual delivery of the controlled substance is not necessary to prove intent to deliver. *People v Wolfe*, 440 Mich 508, 524; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Intent to deliver may be inferred from all of the facts and circumstances, including the amount of narcotics and the way in which they are packaged, and minimal circumstantial evidence is sufficient. *Id.*; *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

The evidence showed that defendant was in possession of cocaine that was in a mixture weighing less than fifty grams. The cocaine was packaged in seven individual “corner ties,” each containing one or two rocks of crack cocaine of various sizes. There was no evidence that defendant possessed any paraphernalia associated with personal use. An officer qualified as an expert in narcotics trafficking testified that it was uncommon for someone who just uses cocaine to possess more than two or three rocks at one time. From such evidence, the jury could reasonably infer an intent to deliver. *Wolfe, supra* at 524-525; *People v Ray*, 191 Mich App 706, 708-709; 479 NW2d 1 (1991).

Finally, defendant contends that the court erred in imposing a maximum sentence of thirty years’ for the narcotics conviction, contending that imposition of the longest maximum sentence allowed by law violated the principle of proportionality.

Because the crime occurred after January 1, 1999, defendant was subject to the statutory sentencing guidelines. MCL 769.34(2); *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000). The guidelines established a minimum sentence range of five to twenty-eight months’. MCL 777.21(3)(a); MCL 777.65. The maximum sentence as an habitual offender was thirty years’. MCL 333.7401(2)(a)(iv); MCL 769.10(1)(a). Defendant’s minimum sentence was within the guidelines and his maximum sentence was within statutory limits. Because defendant’s minimum sentence was within the guidelines and defendant does not contend that the court erred in scoring the guidelines or relied upon inaccurate information at sentencing, review of the sentence is not permitted. MCL 769.34(10); *People v Babcock*, 244 Mich App 64, 73; 624 NW2d 479 (2000).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh