

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EARL LAMONT JONES, JR.,

Defendant-Appellant.

UNPUBLISHED

August 22, 1997

Nos. 193819;193821

Saginaw Circuit Court

LC Nos. 94-009857-FH;

95-010589-FH

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Defendant appeals by right his plea-based convictions of uttering and publishing and possession of cocaine under twenty-five grams, both enhanced by third offender status. Having been consolidated by administrative order of this Court for the convenient and efficient administration of justice, these cases are now being decided without oral argument pursuant to MCR 7.214(E).

The sole argument defendant makes on appeal is that his trial counsel was ineffective in failing to obtain or effectuate a sentence bargain with the trial judge as permitted by *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). There is, however, nothing in the record to establish, first, that counsel failed to attempt to do so, or, more importantly, that, assuming counsel failed to make the attempt, if he had done so that the trial judge would have agreed to a *Cobbs* bargain that would have resulted in lesser sentences than those in fact imposed. As the trial court noted at sentencing, defendant could have received up to twenty-eight years as a third offender for uttering and publishing, but the trial court, in its discretion, fixed the maximum sentence at that mandated by statute for a first offender, fourteen years, and defendant's minimum sentence was only two years on each charge. Defendant has failed to establish either that counsel was derelict in his performance or that any claimed deficiency actually

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

resulted in prejudice to defendant. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). Accordingly, appellate relief on a claim of ineffective assistance of counsel cannot be granted.

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell