

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AL LUCIAN CARTER,

Defendant-Appellant.

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UNPUBLISHED

January 23, 1998

No. 191254

Recorder's Court

LC No. 95-001831 FH

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction of attempted possession of heroin under twenty-five grams, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). He contends that he was deprived of the effective assistance of counsel at trial because counsel failed to demand the production of the partner of the arresting officer, who might have corroborated defendant's version of the incident, which the trier of fact rejected. Defendant also claims that counsel's failure to request fingerprinting of the drug envelopes constituted ineffective assistance of counsel. We affirm.

Defendant failed to obtain an affidavit from the missing witness or otherwise to adduce his testimony in a post-verdict hearing motion for a new trial. The decision whether to call a witness is one of trial strategy, and in claiming ineffective assistance of counsel, defendant has the burden of overcoming the presumption that this decision by counsel was sound trial strategy. *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997). Without a record establishing that the testimony of the witness would have been favorable to defendant, defendant has clearly failed in his burden. *People v Pickens*, 446 Mich 298, 327; 521 NW2d 797 (1994).

Because defendant was not convicted of possession of the heroin, but rather attempted possession, the failure to obtain fingerprinting evidence was not prejudicial to defendant and did not deprive him of effective assistance of counsel. *People v Mitchell, supra*.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra