

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IGNACIO G. GUTIERREZ,

Defendant-Appellant.

UNPUBLISHED

February 12, 1999

No. 206336

Recorder's Court

LC No. 97-000045

Before: Sawyer, P.J., and Bandstra and R. B. Burns*, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant received an enhanced sentence, pursuant to MCL 769.13; MSA 28.1085, of eight to forty years in prison, the sentence to run consecutively to a prior parole violation sentence. We affirm.

Defendant's first argument on appeal is that his right to due process was violated by the failure of the police to conduct fingerprint testing. We disagree. The police did not suppress any evidence, and were not required to develop exculpatory evidence for defendant. *People v Miller (After Remand)*, 211 Mich App 30, 43; 535 NW2d 518 (1995); *People v Stephens*, 58 Mich App 701, 705-706; 228 NW2d 527 (1975). "Whether or not to run fingerprint tests is a legitimate police investigative decision." *Id.*, p 706. Defendant's right to due process was not violated.

Defendant's second argument on appeal is that the trial court abused its discretion in denying defendant's request for polygraph examinations of defendant and other witnesses and for an in-camera interview of Officer Hall. We disagree. MCR 6.201, the court rule governing discovery (which defendant has failed to cite or discuss), contains no requirement that polygraph examinations be conducted whenever a defendant so requests, nor does the rule contain any applicable provision for the in-camera interview of a witness. In addition, defendant has not shown that the requested actions of the trial court would have aided in his defense or led to the discovery of exculpatory information. It further

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

appears that defense counsel was provided with Officer Hall's report and could have contacted Hall, thus making an in-camera interview unnecessary.

Defendant's contention that he was deprived of the right to present a defense by virtue of the trial court's ruling on these discovery matters is also without merit. Defendant was not denied the right to present the testimony of witnesses and to compel their attendance, nor was he deprived of the right to present his version of the facts to the jury. *People v Hayes*, 421 Mich 271, 278-279; 364 NW2d 635 (1984). Also, defendant's contention that he was entitled to have the state pay for polygraph examinations because a wealthier defendant could have afforded such tests is without merit. The state is not required to "purchase for the indigent defendant all the assistance that his wealthier counterpart might buy," but is only required to provide indigent defendants with the "basic tools of an adequate defense." *Ake v Oklahoma*, 470 US 68; 105 S Ct 1087; 84 L Ed 2d 53, 62 (1985). Defendant has cited no authority to establish that a polygraph examination is a basic tool of an adequate defense.

Defendant's final argument on appeal is that his sentence of eight to forty years is disproportionate. We disagree. Although the amount of cocaine delivered, .26 grams, was relatively small, defendant has continually been involved in drug-related offenses. He has two prior convictions of possession of less than twenty-five grams of cocaine, and one prior conviction of delivery of less than fifty grams of cocaine. The defendant in *People v Antolovich*, 207 Mich App 714; 525 NW2d 513 (1994), the case relied upon by defendant, did not have such a prior record. Moreover, the defendant in that case had a history of steady employment, *id.*, p 722, unlike defendant in the instant case. Also, in the case at bar, the sentencing guidelines may not be taken into account because defendant was sentenced as an habitual offender. *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996). We therefore conclude that defendant's sentence was proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Affirmed.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Robert B. Burns