

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHON DELEON PICKETT,

Defendant-Appellant.

UNPUBLISHED

November 30, 1999

No. 215423

Saginaw Circuit Court

LC No. 90-003936 FH

Before: Jansen, P.J., and Hoekstra and J. R. Cooper*, JJ.

MEMORANDUM.

Defendant claims an appeal from the sentence imposed on his plea-based conviction of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). We affirm.

In 1990, defendant was sentenced to five to twenty years in prison. In *People v Pickett*, memorandum opinion of the Court of Appeals, issued November 24, 1992 (Docket No. 138329), we affirmed defendant's sentence.

In July, 1998, the trial court granted defendant's motion for relief from judgment seeking resentencing, for the reason that the judgment making defendant's sentence consecutive to the sentence he was serving when he committed the instant offense was not entered after a formal resentencing proceeding. The trial court rejected defendant's argument that the sentence for the instant offense must be concurrent with the sentence for the previous offense.

At sentencing, defendant's appointed counsel requested an adjournment to research the issue of consecutive sentencing. The trial court denied the request on the ground that as a matter of law the sentence was required to be consecutive. The trial court sentenced defendant to five to twenty years in prison, with credit for 2,657 days.

Defendant argues that the trial court's denial of counsel's request for an adjournment deprived him of the effective assistance of counsel, and that the trial court erred by ordering that his sentence for

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

the instant offense be consecutive to his prior sentence. We disagree and affirm.

A sentence imposed for a conviction of an enumerated drug offense, such as delivery of less than fifty grams of a controlled substance, must be consecutive to a sentence the defendant is already serving. MCL 333.7401(3); MSA 14.15(7401)(3). It is irrelevant that the prior sentence is the result of a probation violation that also resulted in the subsequent offense. *People v Hardy*, 212 Mich App 318, 322-324; 537 NW2d 267 (1995). The trial court's denial of counsel's request for an adjournment did not deprive defendant of the effective assistance of counsel. Any argument made by counsel for concurrent sentencing would have been futile. *Id.* Counsel is not required to make a futile argument. *People v Rodriguez*, 212 Mich App 351, 355-356; 538 NW2d 42 (1995).

Affirmed.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Jessica R. Cooper