

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KIM S. HENRY,

Defendant-Appellant.

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UNPUBLISHED

December 15, 2000

No. 214107

Wayne Circuit Court

LC No. 97-009275

Before: Bandstra, C.J., and Gage and Wilder, JJ.

MEMORANDUM.

After a jury trial, defendant was convicted of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to an eight month to 20 year term of incarceration for the possession with intent to deliver conviction, and a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first contends that the trial court erred by not instructing the jury on the issue of flight, specifically that the jury should not consider defendant's flight as substantive evidence of his guilt. In the absence of defendant's objection to the trial court's instructions or request of a limiting instruction regarding flight evidence, we find that the trial court in instructing the jury committed no error. *People v Rice (On Remand)*, 235 Mich App 429, 444; 597 NW2d 843 (1999) (Absent a request or objection, "appellate courts have declined to impose a duty on trial courts to give sua sponte limiting instructions such as the one now suggested by defendant.").

Even were we to assume that the trial court plainly erred in failing to sua sponte instruct the jury regarding the extent to which it should consider evidence of defendant's flight from the police, this error would not warrant reversal of defendant's convictions because the error did not affect defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999). City of Detroit Police Officer Jeffrey Weiss testified that he witnessed defendant apparently attempting to sell drugs in the middle of the street near 4093 Lovett Street, a suspected area of drug activity. After approaching defendant, who fled, and following defendant into 4093 Lovett, Weiss witnessed defendant throw behind a couch a baggie that contained several large, uncut rocks of crack cocaine. Weiss further testified that a subsequent search of defendant revealed that defendant carried a revolver, nineteen individually wrapped rocks of crack and \$370 cash. In light of this overwhelming evidence of defendant's guilt, we cannot conclude that defendant "is actually innocent or the error seriously affected the fairness, integrity, or public reputation of [the] judicial proceedings." *Id.* at 774.

Defendant also argues that his trial counsel was ineffective because he failed to request a flight instruction. In view of the available record, however, we conclude that defendant failed to show that any alleged ineffectiveness of defense counsel affected the outcome of defendant's trial. *People v Poole*, 218 Mich App 702, 717-718; 555 NW2d 485 (1996); *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987).

Affirmed.

/s/ Richard A. Bandstra  
/s/ Hilda R. Gage  
/s/ Kurtis T. Wilder