

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRYANT S. JACKSON,

Defendant-Appellant.

UNPUBLISHED

July 13, 2001

No. 221704

Wayne Circuit Court

LC No. 98-006693

Before: Saad, P.J., and Holbrook, Jr. and Murphy, JJ.

MEMORANDUM.

Defendant appeals as of right from convictions of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), and carrying a concealed weapon (CCW), MCL 750.227b, for which he was sentenced to two to twenty years', two to five years', and two to four years', respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was originally charged with two narcotics offenses and possession of a firearm during the commission of a felony. MCL 750.227b. Following a bench trial, he was convicted of the narcotics charges and of CCW instead of felony-firearm. Defendant's sole claim on appeal is that because he was not charged with CCW, never had notice that such a charge might be considered, and CCW is not a cognate lesser offense of felony-firearm, the court lacked authority to convict him of that offense.

Regardless of the merits of defendant's argument, he has waived any error. During closing arguments, his attorney argued that the facts did not support the felony-firearm charge and the court should either acquit defendant or find him guilty of CCW. The law is clear that a defendant cannot "assign error on appeal to something his own counsel deemed proper at trial." *People v Green*, 228 Mich App 684, 691; 580 NW2d 444 (1998). Thus "[c]ounsel cannot request a certain action in the trial court, and then, after the request has been followed by the trial court, argue on appeal that the action was error." *People v Murry*, 106 Mich App 257, 262; 307 NW2d 464 (1981). Defense counsel's argument that CCW was a proper lesser offense

constituted a waiver that extinguished any error. *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000).

Affirmed.

/s/ Henry William Saad

/s/ Donald E. Holbrook, Jr.

/s/ William B. Murphy