

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCOS ANTHONY FLORES, JR.,

Defendant-Appellant.

UNPUBLISHED

February 8, 2002

No. 226949

Oakland Circuit Court

LC No. 99-165057-FH

Before: Sawyer, P.J., and O'Connell and Zahra, JJ.

MEMORANDUM.

Defendant appeals as of right from a jury conviction of possession with intent to deliver more than fifty but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii), second or subsequent offense, MCL 333.7413, for which he was sentenced as an habitual offender, fourth offense, MCL 769.12, to ten to twenty years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

During deliberations, the jury sent out several notes regarding intent to deliver in relation to the amount of the controlled substance involved. Rather than respond to the jury's questions directly, the court reread certain instructions. Defendant's sole claim on appeal is that the trial court erred in refusing to answer the questions directly in the manner he advocated. A review of the record shows that while defense counsel did express an opinion regarding how the questions should be answered, he approved the court's decision to reread certain instructions to the jury. This operated as a waiver that extinguished any error. *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000).

Affirmed.

/s/ David H. Sawyer

/s/ Peter D. O'Connell

/s/ Brian K. Zahra