STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORTEZE LAMOND SMITH,

Defendant-Appellant.

UNPUBLISHED
May 17, 2002

No. 231219
Oakland Circuit Court
LC No. 99-166777-FH

Before: Smolenski, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and sentenced to lifetime probation. He appeals as of right. We affirm.

Defendant first argues that defense counsel was ineffective for failing to object to testimony that he was found in the company of known felons, and to testimony that a companion's car field-tested positive for cocaine. We disagree. Because defendant did not raise this issue in a motion for a new trial or a *Ginther*[1] hearing, our review is limited to mistakes apparent from the record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994).

To establish ineffective assistance of counsel, defendant must show that his trial counsel's performance was deficient and that, under an objective standard of reasonableness, counsel made an error so serious that he was not performing as the attorney guaranteed by the constitution. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991). Defendant must overcome the presumption that the challenged conduct might be considered sound trial strategy and must further show that he was prejudiced by the error in question. *Pickens*, *supra* at 312, 314; *Tommolino*, *supra* at 17. That is, defendant must show that the error would have made a difference in the outcome of the trial. *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995).

First, contrary to what defendant asserts, there was no testimony that his companion's car was field-tested for cocaine. Rather, our reading of the record indicates that the comment

[1] *People v Ginther*, 390 Mich 436, 442-444; 212 NW2d 922 (1973).

concerning a positive field test was made in reference to the material inside the bag that was found in the back of the squad car. Because the composition of that substance was at issue, defense counsel was not ineffective for failing to object. Any objection would have been futile, and defense counsel is not required to raise futile or meritless objections. *People v Kulpinski*, 243 Mich App 8, 27; 620 NW2d 537 (2000).

We do agree with defendant's argument that the testimony that he was found in the company of known felons was not relevant to any element of the crime and had a tendency to be prejudicial because it suggested that defendant was a drug offender because his companions were drug offenders. Generally, such evidence would be subject to exclusion under MRE 403 due to its prejudicial effect. See *People v Spearman*, 195 Mich App 434, 446; 491 NW2d 606 (1992), rev in part on other grounds sub nom in *People v Rush*, 443 Mich 870; 504 NW2d 185 (1993). However, defendant here was tried in a bench trial. "Unlike a jury, a judge is presumed to possess an understanding of the law, which allows him to understand the difference between admissible and inadmissible evidence or statements of counsel." *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992). In this case, there is no indication that the known prior records of defendant's companions played any role in the trial court's decision. Rather, the court noted that the squad car had been searched before defendant was detained, that the doors and windows were closed, that no one else had approached the car, that the drugs inside the bag were easily visible, and that there was no animosity between defendant and the officers. The court reasonably inferred that defendant was the person who placed the drugs in the back of the squad car. There is no indication that the background or character of defendant's companions influenced the trial court's decision. Therefore, defendant has failed to show that, but for counsel's error in failing to object to this testimony, the result at trial would have been different. *LaVearn, supra* at 216; *Pickens, supra* at 312, 314. Accordingly, reversal is not required.

Next, defendant argues that the evidence was insufficient to show that he possessed the drugs in question. Again, we disagree.

As mentioned previously, the testimony showed that the squad car was searched at the beginning of the officers' shift, and again after the only other arrest that day, before defendant was detained. Further, the officer did not see anything in the back seat before defendant entered the vehicle. Defendant was patted down for weapons before being placed in the squad car, but was not searched for contraband. While one officer wrote defendant a ticket, the other officer stood by to make sure no one approached the patrol car. Defendant was not handcuffed. After defendant exited the car, an officer found a plastic baggie containing twenty-four individual packets of crack cocaine near where defendant's feet had been. No one else had been near the patrol car; the doors had been closed, and the windows rolled up.

Viewed most favorably to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant was the person who placed the drugs in the squad car. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985).

Affirmed.

/s/ Michael R. Smolenski
/s/ Janet T. Neff
/s/ Helene N. White