

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
August 14, 2012

v

AARON ANTHONY WRIGHT,

Defendant-Appellant.

No. 304632
Jackson Circuit Court
LC No. 10-005655-FH

Before: TALBOT, P.J., and WILDER and RIORDAN, JJ.

PER CURIAM.

Aaron Anthony Wright appeals as of right his jury trial conviction of delivery of less than 50 grams of cocaine,¹ and possession with the intent to deliver less than 50 grams of cocaine.² Wright was sentenced as an habitual offender, second offense,³ to three years and ten months to 40 years' imprisonment for delivery of less than 50 grams of cocaine, and to two years and four months to 30 years' imprisonment for possession with intent to deliver less than 50 grams of cocaine. We affirm.

Wright argues that his trial counsel provided him with ineffective assistance. We disagree. Because Wright did not move for a new trial or an evidentiary hearing, our review is limited to mistakes apparent on the record.⁴ To establish ineffective assistance of counsel, a defendant "must show that his attorney's representation fell below an objective standard of reasonableness and that this was so prejudicial to him that he was denied a fair trial."⁵ To show prejudice, a defendant must demonstrate "a reasonable probability that, but for counsel's

¹ MCL 333.7401(2)(a)(iv).

² *Id.*

³ MCL 769.11.

⁴ *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002).

⁵ *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000), citing *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

unprofessional errors, the result of the proceeding would have been different.”⁶ “Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise.”⁷

Wright first claims that defense counsel was ineffective for failing to object to two statements that the prosecutor made during his opening statement, which Wright alleges improperly injected the prosecutor’s personal opinion of Wright’s guilt into the case. We find, however, that when evaluating the prosecutor’s statements in context, the prosecutor was permissibly providing a “fair introduction to the evidence” and the case.⁸ Specifically, the prosecutor apprised the jury that the evidence would show that there was no question that Wright was a drug dealer. The prosecutor’s opening statement did not express a personal opinion regarding Wright’s guilt.⁹ Accordingly, any objection to the prosecution’s opening statement would have been meritless, and defense counsel is not ineffective for not making a meritless objection.¹⁰ Thus, Wright’s argument must fail.

Wright also argues that defense counsel was ineffective for waiving any objection to the admission of the contents of a laboratory report confirming that the rock Wright sold to Sergeant Timothy Hibbard was cocaine. Wright claims that an objection could have been made based on Confrontation Clause grounds. “[I]f the decision constitutes reasonable trial strategy, which is presumed, the right of confrontation may be waived by defense counsel as long as the defendant does not object on the record.”¹¹ At trial, defense counsel waived Wright’s right to confrontation by stating that he had “no objection” to the admission of the report.¹² There is no indication in the record that the laboratory analyst could not have been called to testify. Thus, defense counsel had a choice between agreeing to the admission of the report or requiring the declarant to testify. Defense counsel may have decided to have the evidence presented through the admission of the report, rather than live testimony, which could have been more damaging. Wright has failed to overcome the strong presumption that defense counsel exercised sound trial strategy.¹³ As such, Wright has failed to establish ineffective assistance of counsel.¹⁴

⁶ *Toma*, 462 Mich at 302-303, quoting *People v Mitchell*, 454 Mich 145, 167; 560 NW2d 600 (1997) (quotation marks omitted).

⁷ *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004).

⁸ *People v Moss*, 70 Mich App 18, 32; 245 NW2d 389 (1976).

⁹ *People v Bahoda*, 448 Mich 261, 282-283; 531 NW2d 659 (1995).

¹⁰ See *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991).

¹¹ *People v Buie*, 491 Mich 294; ___ NW2d ___ (2012), slip op, p 9.

¹² See *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000).

¹³ *Solmonson*, 261 Mich App at 663.

¹⁴ *Toma*, 462 Mich at 302.

Wright finally claims that there was insufficient evidence that he possessed the cocaine that was the basis of his conviction for possession with the intent to deliver less than 50 grams of cocaine. We disagree. We review a challenge to the sufficiency of the evidence de novo.¹⁵ “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.”¹⁶ Here, Wright showed a police officer four individually packaged rocks before selling one of them to the officer. The rock sold to the officer was subsequently tested and found to be cocaine. While the other three rocks were not tested, the fact that the fourth rock was cocaine was circumstantial evidence that the other three rocks available for sale were also cocaine. Wright was subsequently found without the other three rocks but with \$299, which was further circumstantial evidence that allowed the jury to infer that the rocks were cocaine and sold in exchange for some of the money found on Wright. “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.”¹⁷ Thus, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have concluded beyond a reasonable doubt that Wright possessed cocaine as required to prove possession with the intent to deliver less than 50 grams of cocaine.¹⁸

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Riordan

Wright also makes a conclusory statement in his brief on appeal that defense counsel’s failure to object to the prosecutor’s opening statement and the admission of the laboratory report violated his due process right to present a defense. Wright, however, has failed to brief the merits of this assertion. Thus, this issue is abandoned. *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004).

¹⁵ *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).

¹⁶ *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992).

¹⁷ *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (citation and quotation omitted).

¹⁸ *Wolfe*, 440 Mich at 515-516.