

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WAYNE LAFAYETTE JACKSON,

Defendant-Appellant.

UNPUBLISHED

December 30, 1997

No. 196094

Kalamazoo Circuit Court

LC No. 95-001503 FH

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

PER CURIAM.

Defendant was convicted by jury of delivering less than 50 grams of cocaine, MCL 333.7401(1) and (2)(a)(iv); MSA 14.15(7401)(1) and (2)(a)(iv), and sentenced to an enhanced term of imprisonment of two to thirty years, MCL 769.12; MSA 28.1084. Defendant appeals as of right. We affirm.

Defendant advances two claims of ineffective assistance of counsel. His failure to move for an evidentiary hearing or a new trial in conjunction with these claims limits appellate review to the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

Defendant argues that his trial counsel was ineffective for failing to object to testimony defendant characterizes as inadmissible bad acts evidence. Assuming without deciding that the now challenged testimony was inadmissible, defendant's ineffective assistance claim must fail where defendant has failed to rebut the presumption of effective assistance. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). A sound strategic reason existed for not objecting, that being a desire not to draw undue jury attention to an otherwise facially innocuous statement.

Defendant also argues that counsel was ineffective for failing to raise the issue of entrapment. We disagree. The record contains no evidence from which it can be concluded that defendant had a colorable claim of entrapment. *People v Ealy*, 222 Mich App 508, 510; 564 NW2d 168 (1997).

* Circuit judge, sitting on the Court of Appeals by assignment.

Counsel was not required to make a frivolous argument. *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991).

Defendant next argues that he was deprived of a fair and impartial trial by prosecutorial misconduct during closing and rebuttal arguments. Defendant failed to object below to the remarks he now challenges as improper. Accordingly, appellate review is precluded unless an objection could not have cured the error or a failure to review the issue would result in a miscarriage of justice. *Stanaway, supra*. Neither situation is present here. Viewing the prosecutor's remarks in the context in which they were made, *People v LeGrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994), the challenged remarks constitute proper comment on the evidence, *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995), proper argument that certain evidence was uncontradicted, *People v Perry*, 218 Mich 520, 538; 554 NW2d 362 (1996), *lv pending*, proper argument that a witness should be believed, *People v Wise*, 134 Mich App 82, 104; 351 NW2d 255 (1984), and proper argument that defendant is not worthy of belief, *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996).

Finally, defendant was properly sentenced under the habitual offender statute. *People v VanderMel*, 156 Mich App 231, 234; 401 NW2d 285 (1986).

Affirmed.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber