

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOOKER WHITFIELD,

Defendant-Appellant.

UNPUBLISHED

July 13, 2001

No. 223544

Oakland Circuit Court

LC No. 98-157999

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

MEMORANDUM.

Defendant appeals as of right from a jury conviction of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), second offense, MCL 333.7413, for which he was sentenced to a year in jail. We affirm.

Defendant's sole claim on appeal is that trial counsel was ineffective for failing to move to suppress evidence seized from defendant's car after his arrest because the arrest was unlawful. Because defendant did not raise this issue below, review is limited to mistakes apparent on the record. *People v Price*, 214 Mich App 538, 547; 543 NW2d 49 (1995).

The general rule is that effective assistance of counsel is presumed and the defendant bears a heavy burden of proving otherwise. *People v Eloby (After Remand)*, 215 Mich App 472, 476; 547 NW2d 48 (1996). To establish that a defendant's right to effective assistance of counsel was so undermined that it justifies reversal of an otherwise valid conviction, the defendant must show that counsel's representation fell below an objective standard of reasonableness and that the representation so prejudiced defendant as to deprive him of a fair trial. *Price, supra*. To establish prejudice, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994); *People v Pickens*, 446 Mich 298, 314; 521 NW2d 797 (1994).

Counsel was not ineffective for failing to move to suppress the evidence; the record shows that counsel made an oral motion to suppress at trial. While counsel may not have inquired into the validity of the LEIN information which showed that defendant's license was suspended, the error did not prejudice defendant because the search of his car was not illegal. The record showed that defendant had a restricted license valid between the hours of 7:00 a.m.

and 11:00 p.m. and was stopped for disregarding a stop sign at 11:50 p.m. Defendant committed a civil infraction by failing to stop for a stop sign, MCL 257.671(3), and thus the police had probable cause to stop him. *People v Haney*, 192 Mich App 207, 210; 480 NW2d 322 (1991). Although defendant had a restricted license, he was unable to produce it upon demand of a police officer as required by law, MCL 257.311, which was a misdemeanor. MCL 257.901(1). He was also driving outside the restrictions imposed on the license, which was also a misdemeanor. MCL 257.312(4). Because defendant committed two misdemeanors in the presence of the police, they had the right to arrest him without a warrant. MCL 764.15(1)(a). See *People v Boykin*, 31 Mich App 681, 684; 188 NW2d 100 (1971). Having lawfully arrested defendant, the police could search his car without a warrant incident to that arrest, *People v Catanzarite*, 211 Mich App 573, 581; 536 NW2d 570 (1995), or as an inventory search in accordance with standard departmental procedure. *People v Houstina*, 216 Mich App 70, 77; 549 NW2d 11 (1996).

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy