

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC DAMON WILLIS,

Defendant-Appellant.

UNPUBLISHED

December 28, 2004

No. 249890

Wayne Circuit Court

LC No. 03-003952-01

Before: Murphy, P.J., White and Kelly, JJ.

PER CURIAM.

Defendant was charged with possession of less than twenty-five grams of cocaine with intent to deliver, MCL 333.7401(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b. Following a bench trial, defendant was convicted of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), and felony-firearm. The trial court sentenced him to a one-year suspended sentence on the controlled substance conviction and to the mandatory two-year term for felony-firearm. Defendant appeals his convictions as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Although defendant concedes that the evidence adduced at trial, when viewed in a light most favorable to the prosecution, was sufficient to prove each element of the crimes beyond a reasonable doubt, *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001), he contends that the evidence is insufficient when considered in light of newly discovered evidence suggesting that the prosecution's witnesses may have falsified the evidence and perjured themselves at trial, and that due process requires he be granted a new trial in light of this evidence.

On the defendant's motion, the court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes the verdict has resulted in a miscarriage of justice. MCR 6.431(B). A new trial may be granted on the basis of newly discovered evidence, including evidence that false testimony was presented at trial. *People v Davis*, 199 Mich App 502, 515; 503 NW2d 457 (1993); *People v Canter*, 197 Mich App 550, 558-559; 496 NW2d 336 (1992).

Here, defendant did not timely file motion for a new trial before the trial court, and thus this issue is not preserved for appeal. MCR 6.431; *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). Accordingly, our review is precluded unless the defendant demonstrates

plain error that affected the outcome of the lower court proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Attached to his brief on appeal is a copy of a grand jury indictment charging seventeen Detroit police officers for violating criminal defendants' constitutional rights by falsifying police reports and perjuring themselves at trials. However, appeals are heard on the original record, MCR 7.210(A)(1), and it is impermissible to expand the record on appeal. *People v Powell*, 235 Mich App 557, 561 n 4; 599 NW2d 499 (1999). Because the indictment is not part of the record below, it cannot be considered on appeal. *Kent Co Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 579-580; 609 NW2d 593 (2000), *aff'd sub nom Byrne v Michigan*, 463 Mich 652 (2001). Moreover, even if we were to consider the indictment, it would not establish a right to relief as it refers to seventeen named officers, none of who testified at trial or who have been found guilty of any charges. In addition, defendant has not shown that any of the officers involved in this case are among any of the unindicted coconspirators named in the indictment. Lastly, even when the indictment is considered, the evidence was sufficient to convict.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly