

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAWAD HELTON,

Defendant-Appellant.

UNPUBLISHED
September 4, 2001

No. 224951
Wayne Circuit Court
LC No. 98-006303

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced him as a second felony offender, MCL 769.10, to one to twenty years' imprisonment for the controlled substance conviction, to be served consecutively to the two-year sentence for the felony-firearm conviction. Defendant appeals as of right and we affirm.

Defendant's sole claim on appeal is that he was denied a fair trial when the trial judge recalled and questioned a prosecution witness after both sides rested. We agree with the prosecution that defendant has waived this issue. A defendant's acquiescence to a trial court's decision about how to proceed at trial waives the issue on appeal. *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000). The *Carter* Court distinguished between waiver, which it likened to an express approval of the court's decision, and forfeiture, which involves a failure to object, and concluded that a waiver extinguishes any error. *Id.* Here, defense counsel specifically stated that he had no objection to the court recalling and questioning the witness. This amounts to an approval of the judge's evidentiary decision on defendant's behalf. *Id.* at 218-219. Because the waiver extinguished any error, reversal of defendant's convictions is not warranted. *Id.* at 219-220.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage
/s/ Charles H. Miel

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