

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUSSELL EDWARD PERRITT,

Defendant-Appellant.

UNPUBLISHED

February 4, 1997

No. 176663

Hillsdale Circuit Court

LC No. 00186973

Before: Bandstra, P.J., and Hoekstra and S.F. Cox,* JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of breaking and entering an occupied dwelling with intent to commit a larceny, MCL 750.110; MSA 28.305, and conspiracy to break and enter an occupied dwelling with intent to commit a larceny, MCL 750.157a; MSA 28.354(1). Defendant then pleaded guilty to being an habitual offender, second offense, MCL 769.10; MSA 28.1082, and was sentenced to 4 to 22 ½ years' imprisonment. Defendant now appeals, and we affirm.

Defendant argues that he is entitled to resentencing because there was no evidence to support the trial court's scoring of Offense Variable (OV) 9 and OV 17. Although defendant did not challenge the scoring of these variables prior to sentencing, he did file a motion to remand on this basis. See *People v Eaves*, 203 Mich App 356, 358; 512 NW2d 1 (1994). In a related argument, defendant argues that his counsel's failure to object to the trial court's scoring of these variables amounted to ineffective assistance of counsel.

This Court has recently concluded, in light of our Supreme Court's holding in *People v Cervantes*, 448 Mich 620; 532 NW2d 831 (1995), that there is no obligation upon the trial court to take the guidelines into consideration in sentencing an habitual offender.¹ *People v Haacke*, 217 Mich App 434, 437; 553 NW2d 15 (1996). Recognizing that guidelines for habitual offenders are scored only so that guidelines covering habitual offenders can be developed, this Court in *Haacke* declined to order a remand for resentencing where the guidelines were improperly scored. *Id.* at 437 n 1.

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

Accordingly, we need not review defendant's challenges to the scoring of OV 9 and OV 17, as we believe defendant lacks standing to challenge the scoring of the offense variables at issue. See *People v Yeoman*, 218 Mich App 406, 419-422; 554 NW2d 577 (1996).

Given that a defendant who is a habitual offender has no standing to challenge the scoring of the sentencing guidelines and that guidelines ranges for habitual offenders are computed only as an administrative task, defendant's claim of ineffective assistance of counsel on the basis of his counsel's failure to challenge the offense variables at issue must fail because defendant cannot show prejudice from this failure. See *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994); *People v Rodriguez*, 212 Mich App 351, 355-356; 538 NW2d 42 (1995).

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Sean F. Cox

¹ Defendant's claim that he was denied due process because the trial court relied upon the allegedly erroneously scored guidelines is not supported by the record. Although the trial court referred to its reliance on the guidelines when sentencing defendant on the underlying offenses, defendant was resentenced on the habitual offender charge without any reference by the trial court to the sentencing guidelines.