

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD HARVEY ROGERS,

Defendant-Appellant.

UNPUBLISHED

June 3, 1997

No. 188655

Genesee Circuit Court

LC No. 93-048718-FH

Before: Smolenski, P.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Defendant was convicted by a jury of unarmed robbery, MCL 750.350; MSA 28.798. Following his conviction, defendant pleaded guilty to habitual offender, fourth offense, MCL 769.12(1)(a); MSA 28.1084(1)(a). He was sentenced to seventeen to thirty years in prison. He appeals by leave granted. We affirm.

Defendant first argues that his conviction must be reversed because the trial court failed *sua sponte* to give CJI2d 7.5, an instruction that requires the jury to determine if defendant honestly believed that he was acting under a claim of right to the money taken from the victim. We disagree. Where there is no objection to the jury instructions, this Court may consider the issue only if the failure resulted in manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1985). “No error results from the omission of an instruction if the charge as a whole covers the substance of the omitted instruction.” *People v Harris*, 190 Mich App 652, 664; 476 NW2d 767 (1991).

Unarmed robbery involves “(1) the felonious taking of any property which may be the subject of larceny from the person or presence of the complainant, (2) by force and violence, assault or putting in fear, (3) while not armed with a dangerous weapon.” *People v Denny*, 114 Mich App 320, 323-324; 319 NW2d 574 (1982). Unarmed robbery requires proof of specific intent. *People v Dupie*, 395 Mich 483, 487; 236 NW2d 494 (1985). A defendant’s good faith belief that he owns or is entitled to the property may negate the specific intent element. *People v Karasek*, 63 Mich App 706, 710-711; 234 NW2d 761 (1975). We find that the instructions given to the jury required the jury to

determine that the money did not belong to defendant before it could convict him of unarmed robbery. Therefore, because the instructions in their entirety covered the substance of the omitted instruction, the lack of a claim of right instruction did not cause manifest injustice to defendant.

Second, defendant argues that his sentence of 17 to 30 years' imprisonment is disproportionate and therefore the court abused its discretion in sentencing him. We disagree.

An habitual offender sentence will be an abuse of discretion if it violates the principle of proportionality. *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996). Under the habitual offender, fourth offense statute, MCL 769.12(1)(a); MSA 28.1084(1)(a), defendant could have been sentenced to life or a lesser term. Given defendant's extensive criminal history and the seriousness of the crime for which he was convicted, we find that defendant's sentence did not violate the principle of proportionality. Therefore, the trial court did not abuse its discretion in sentencing defendant.

Affirmed.

/s/ Michael R. Smolenski

/s/ Michael J. Kelly

/s/ Roman S. Gibbs