

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID ALLEN GLEESE,

Defendant-Appellant.

UNPUBLISHED

June 24, 1997

No. 181435

Ottawa Circuit Court

LC Nos. 94-018020-FC; 94-
018201-FC; 94-018069-FC

Before: Reilly, P.J., and Hood and Murphy, JJ.

PER CURIAM.

In each of three separate cases, defendant was charged with armed robbery, MCL 750.529; MSA 28.797, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2), and as a third habitual offender, MCL 769.11; MSA 28.1083. Defendant pleaded guilty to all three charges of armed robbery and being a third habitual offender. Defendant also pleaded guilty to one charge of felony-firearm; however, pursuant to a plea agreement, the other two charges of felony-firearm were dismissed. Defendant was sentenced to two years' imprisonment for the felony-firearm conviction, and to three sentences of life imprisonment for the armed robbery convictions. The life sentences for armed robbery are to be served concurrently to one another but consecutively to the two-year felony-firearm sentence. Defendant appeals as of right and we affirm.

Defendant first argues that he is entitled to resentencing because, during sentencing, the trial court relied on inaccurate information that he would be eligible for parole in twelve or thirteen years if a life sentence was imposed. We disagree. The record fails to indicate that such misinformation was given, or that the trial court relied on such misinformation if given. In fact, the record reveals that defendant's sentence was based on his prior criminal history. In imposing a sentence, a sentencing court may consider a defendant's criminal history. *People v Ross*, 145 Mich App 483, 495; 378 NW2d 517 (1985). Nowhere does the record indicate that defendant's life sentence is based on the supposition that he would be eligible for parole in twelve or thirteen years.

Defendant next argues that the trial court failed to comply with MCR 6.302(B)(2) during the plea proceeding by failing to advise him that he could not be placed on probation. MCR 6.302(B)(2),

unlike its predecessor GCR 1963, 785.7(1)(f), only requires that a defendant be advised of any mandatory minimum sentence required by law. Armed robbery carries no statutory mandatory minimum. *People v Blythe*, 417 Mich 430, 434; 339 NW2d 399 (1983). Therefore, there was no error.

Defendant also argues that counsel was ineffective at sentencing because he erroneously informed the trial court that defendant would be eligible for parole in twelve or thirteen years. A prerequisite for appellate review of an ineffective assistance of counsel claim is a motion for a new trial or for an evidentiary hearing, unless the deficiency is apparent on the record. *People v Juarez*, 158 Mich App 66, 73; 404 NW2d 222 (1987). Here, no such motion was ever filed, and because defense counsel's statement to the trial court does not appear on the record, the alleged deficiency is not apparent from the record. Therefore, this issue is unpreserved for appellate review.

Defendant next argues that defense counsel provided ineffective assistance by failing to challenge defendant's arrest and confession. An issue of whether probable cause existed to arrest a defendant is waived by a plea of guilty. *People v Kim Williams*, 160 Mich App 738, 739-740; 408 NW2d 540 (1987). Additionally, issues regarding the admissibility of statements to the police are also waived by a defendant's guilty plea. *People v Sells*, 164 Mich App 219, 221-222; 416 NW2d 388 (1987). With respect to an ineffective assistance of counsel claim, "[w]here the alleged deficient actions of defense counsel relate to issues that are waived by a valid unconditional guilty plea, the claim of ineffective assistance of counsel relating to those actions is also waived." *People v Vonins (After Remand)*, 203 Mich App 173, 176; 511 NW2d 706 (1993). In this instance, because the alleged deficient actions of defense counsel relate to issues that are waived by a guilty plea, defendant's ineffective assistance of counsel claim is also waived.

Finally, defendant argues that his life sentences for the armed robbery convictions are disproportionate. We disagree. Defendant was sentenced as a third habitual offender. This Court's review of habitual offender sentences using the sentencing guidelines in any fashion is inappropriate and review is limited to determining whether the sentence violates the principle of proportionality, without consideration of the guidelines. *People v Gatewood*, 450 Mich 1025; 546NW2d 252 (1996); *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996). A sentence imposed must be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Because of defendant's continuing criminality and the fact that the instant offenses were committed while defendant was on parole, we find that defendant's sentences are proportionate.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Harold Hood
/s/ William B. Murphy