

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EVERETT DILLARD, a/k/a CHARLES  
EVER DILLARD, a/k/a LESO LEMON SPIVEY,  
a/k/a CHARLES BROWN, a/k/a BRUCE  
BENEFIELD,

Defendant-Appellant.

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UNPUBLISHED

July 15, 1997

No. 196148

Recorder's Court

LC No. 95-007085

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple\*, JJ.

MEMORANDUM.

Defendant pleaded guilty to second-degree home invasion, MCL 750.110a(3); MSA 28.305a(3), and received an enhanced sentence of eight to twenty years imprisonment, reflecting defendant's status as a fourth offender, MCL 769.12; MSA 28.1084. He appeals by leave granted. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that his plea must be vacated under *In re Valle*, 364 Mich 471; 110 NW2d 673 (1961), because the plea was induced by an unfulfilled promise of leniency made by the trial court. We have reviewed the transcript of the plea-taking proceedings and, when read in its entirety, we cannot say that defendant's plea was induced by an unkept promise of leniency. *In re Valle*, *supra* at 477-478; *People v Richards*, 95 Mich App 433, 436-437; 291 NW2d 69 (1980).

Although there are no sentencing guidelines for second-degree home invasion, *People v Edgett*, 220 Mich App 686, 690; \_\_\_ NW2d \_\_\_ (1996), the trial court calculated the guidelines as if defendant had been convicted of breaking and entering an occupied dwelling. Defendant does not challenge the court's authority to engage in these calculations, but instead does challenge the scores the court assigned to each offense variable. Because the sentencing guidelines do not apply to defendant as a consequence of his habitual offender status, defendant may not challenge the court's calculation of the

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

guidelines. *Id.*, at 694-695 (1996). The question on appeal is limited solely to whether the sentence imposed violates the principle of proportionality. *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996). We find that defendant's sentence does not violate the principle of proportionality, in light of defendant's extensive criminal history and his lack of rehabilitative potential. *People v Parrish*, 216 Mich App 178, 185; 549 NW2d 32 (1996); *People v Nantelle*, 215 Mich App 77, 83-84; 544 NW2d 667 (1996).

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Martin M. Doctoroff  
/s/ Donald A. Teeple