

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PARIS DWIGHT SMITH,

Defendant-Appellant.

UNPUBLISHED

August 15, 1997

No. 193828

Saginaw Circuit Court

LC No. 95-011066-FC

Before: Saad, P.J., and Neff and Reilly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted by a jury of two counts of armed robbery, MCL 750.529; MSA 28.797; assault with intent to commit armed robbery, MCL 750.89; MSA 28.284; conspiracy to commit armed robbery, MCL 750.157a; MSA 28.354(1); possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and carrying a concealed weapon, MCL 750.227; MSA 28.424. Defendant was sentenced to two years' imprisonment for the felony-firearm conviction, to be followed by concurrent terms of six to twenty years for each armed robbery conviction, the conspiracy conviction, and the assault conviction, and three to five years for the carrying a concealed weapon conviction. Defendant appeals as of right. We affirm.

Defendant argues that he was denied his right to a fair and impartial trial when the prosecutor, during rebuttal argument, referred to uncharged bad conduct and suggested that the jury had a civic duty to find defendant guilty. After a careful review of the entire record, we disagree. Although the prosecutor's conduct was improper, we find the error was harmless because the effect of the prosecutor's remarks on the jury, if any, was negligible. *People v Mezy*, 453 Mich 269, 285-286; 551 NW2d 389 (1996).

Defendant next criticizes defense counsel's cross-examination of a prosecution witness, which opened the door to the admission of the witness's prior consistent statement. We decline defendant's invitation for this Court to second-guess defense counsel's trial strategy. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987). Defendant was not denied the effective assistance of counsel. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994).

We also reject defendant's challenge to the sentence he received. Defendant's six-year minimum sentence, which falls within the recommended guidelines range, neither violates the principle of proportionality, *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990), nor constitutes cruel or unusual punishment. *People v Bullock*, 440 Mich 15, 37-41; 485 NW2d 866 (1992).

Affirmed.

/s/ Henry William Saad

/s/ Janet T. Neff

/s/ Maureen Pulte Reilly