

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY ALLEN GARDNER, JR.,

Defendant-Appellant.

UNPUBLISHED

January 6, 1998

No. 197564

Kalamazoo Circuit Court

LC No. 95-001140 FH

Before: Griffin, P.J., and Markman and Whitbeck, JJ.

MEMORANDUM.

This appeal as of right follows defendant's conviction for uttering and publishing, MCL 750.249; MSA 28.446, and the subsequent imposition of an enhanced sentence of six to fifteen years' imprisonment, reflecting his status as a fourth offender, MCL 769.12; MSA 28.1084. We affirm.

First, defendant argues that he did not possess the intent to defraud required for a conviction of uttering and publishing. Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that defendant possessed the requisite intent to defraud. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Kaczorowski*, 190 Mich App 165, 171; 475 NW2d 861 (1991). Testimony established that the check defendant attempted to cash was stolen or missing from the office of the person authorized to use the checking account. Further, testimony indicating that defendant gave conflicting accounts of how he obtained the check to a bank teller and to a public safety officer could reasonably be taken as evidence of defendant's guilty knowledge reflecting his intent to defraud in attempting to cash the check.¹

Next, defendant argues that his sentence was disproportionately severe. We disagree. Defendant's sentence was not disproportionately severe to the offense and the offender in light of defendant's five prior felony convictions, seven prior misdemeanor convictions, the fact that he served the maximum sentences on his last two convictions because of the number of minor and major misconducts he received while incarcerated, and defendant's lack of rehabilitative potential as reflected by his criminal history. See *People v Edgett*, 220 Mich App 686, 695-696; 560 NW2d 360 (1996);

People v Dixon, 217 Mich App 400, 411-412; 552 NW2d 663 (1996). On this record, the trial court did not abuse its sentencing discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324, 326; 562 NW2d 460 (1997).

Affirmed.

/s/ Richard Allen Griffin

/s/ Stephen J. Markman

/s/ William C. Whitbeck

¹ The parties dispute whether it is necessary, in a criminal case, to raise an insufficiency of the evidence claim before the trial court to preserve it for appeal. In light of our conclusion that there was sufficient evidence to support defendant's conviction, we need not address this dispute.