

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD ALAN DUENAZ,

Defendant-Appellant.

UNPUBLISHED

February 6, 1998

No. 198517

St. Clair Circuit Court

LC No. 93-002168 FH

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

MEMORANDUM.

Defendant appeals by right his sentences, after resentencing pursuant to this Court's order of February 13, 1995, remanding for resentencing (Docket No. 192764). This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was not deprived of the ordered resentencing by virtue of the trial court's failure to recalculate the sentence guidelines. As defendant was an habitual offender, the guidelines had no relevance to his sentence and were to be calculated, if at all, only for statistical purposes. *People v Edgett*, 220 Mich App 686; 560 NW2d 360 (1996).

Defendant's argument that uncounselled misdemeanor convictions were improperly used at sentencing is also without merit. First, only those uncounselled misdemeanor convictions that resulted in incarceration implicate any constitutional impediment to their use for this purpose. *People v Reichenbach*, 224 Mich App 186, 191; ___ NW2d ___ (1997); *Nichols v United States*, 511 US 738, 742-744; 114 S Ct 1921; 128 L Ed 2d 745 (1994). Second, the mere fact that a misdemeanor conviction resulting in incarceration is uncounselled does not mean that it is the product of a Sixth Amendment violation, since counsel might have been validly waived. To challenge use of a prior conviction for lack of counsel or proper waiver of counsel, defendant must present prima facie proof that the prior conviction violated the Sixth Amendment, or in the alternative evidence that the sentencing court failed to reply to a request for or refused to furnish requested copies of records and documents. Defendant made no such showing at the resentencing, and accordingly reliance on such convictions was entirely proper. *People v Haywood*, 209 Mich App 217, 231-232; 530 NW2d 497 (1995).

Finally, defendant contends that his sentences, of 5 to 10 years for assault with intent to commit second degree criminal sexual conduct, MCL 750.520g(2); MSA 28.788(7)(2), and 2 to 4 years for fourth degree criminal sexual conduct, MCL 750.520e(1)(a); MSA 28.788(5)(1)(a), enhanced by defendant's habitual offender status, MCL 769.11; MSA 28.1083, are disproportionate to the offenses and the offender. The proportionality of habitual offender sentences is reviewed for abuse of sentencing discretion. *People v Edgett, supra*. In light of the crimes for which defendant has been sentenced and his prior criminal record, no such abuse of discretion has been demonstrated.

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly