

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY DATES,

Defendant-Appellant.

UNPUBLISHED

February 13, 1998

No. 197419

Muskegon Circuit Court

LC No. 96-139145-FH

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

Defendant was convicted by jury of inmate in possession of a weapon, MCL 800.283(4); MSA 28.1623(4), and sentenced to an enhanced term of five to twenty years' imprisonment, reflecting his status as a fourth felony offender, MCL 769.12; MSA 28.1084. Defendant appeals as of right. We affirm.

Duress is not a defense to the crime of possession of a weapon by an inmate, absent exceptional circumstances such as when a defendant inmate wrestles a weapon away from the inmate's attacker and then uses the weapon to defend against imminent peril of death or serious bodily injury. *People v Andrews*, 192 Mich App 706, 708; 481 NW2d 831 (1992); *People v Travis*, 182 Mich App 389, 392-395; 451 NW2d 641 (1990). The trial court did not err when it refused to instruct the jury with regard to the defense of duress where the record failed to show that the victim was the aggressor or that defendant was in imminent peril of death or serious bodily injury and, hence, where the record failed to demonstrate the presence of exceptional circumstances. *People v Lemons*, 454 Mich 234, 246-250; 562 NW2d 447 (1997); *Travis, supra*.

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski