

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TODD CARL QUEEN,

Defendant-Appellant.

UNPUBLISHED

April 28, 1998

No. 195926

Oakland Circuit Court

LC No. 95-140443 FH

95-140248 FH

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka*, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions for felonious assault, MCL 750.82; MSA 28.277, felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), felony-firearm, MCL 750.227b; MSA 28.424(2), and fourth felony habitual offender, MCL 769.12; MSA 28.1084, entered after a bench trial. We affirm.

On appeal, defendant asserts that his convictions were against the great weight of the evidence. However, defendant did not move for a new trial and this argument is unpreserved. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997); *People v Smith*, 119 Mich App 91, 95; 326 NW2d 434 (1982). Defendant argues that the trial court clearly erred in failing to find that he acted in self-defense. However, there is ample evidence on the record to support the finding that defendant was the aggressor, and was not acting on an honest and reasonable belief that he was in danger. *People v Heflin*, 434 Mich 482, 502, 508-509; 456 NW2d 10 (1990).

Defendant also argues that the trial court used an improper sentencing procedure when it first sentenced defendant on the underlying offenses, then vacated those sentences, and sentenced defendant as an habitual offender. The trial court has the option to either impose a single sentence on the habitual offender conviction, or to sentence defendant on the underlying offense and then the habitual offender conviction and vacate the underlying sentence. *People v Hardin*, 173 Mich App 774, 778; 434 NW2d 243 (1988). Defendant has failed to show how the amended

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

habitual offender statute affects this method, or how he was prejudiced by the sentencing procedure employed by the trial court.

We affirm.

/s/ Richard A. Bandstra

/s/ Barbara B. MacKenzie

/s/ Nick O. Holowka