STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD JOHN SMOTHERS,

Defendant-Appellant.

UNPUBLISHED
May 5, 1998

No. 202099
Jackson Circuit Court
LC No. 96-076806

Before: McDonald, P.J., and Sawyer and Hoekstra, JJ.

PER CURIAM.

Defendant was charged with assault with intent to commit murder, MCL 750.83; MSA 28.280, inmate in possession of a weapon, MCL 800.283(4); MSA 28.1623(4), inmate in possession of a controlled substance, MCL 800.281(4); MSA 28.1621(4), assault upon a prison employee, MCL 750.197c; MSA 28.393(3), and of being a fourth habitual offender, MCL 769.12; MSA 28.1084. Defendant pleaded guilty to inmate in possession of a weapon, inmate in possession of a controlled substance, and assault upon a prison employee. Following a jury trial on the charge of assault with intent to commit murder, defendant was convicted of the lesser offense of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. The trial court sentenced defendant to twenty-five to fifty years' imprisonment for the assault with intent to do great bodily harm conviction, fifteen to thirty years' imprisonment for the inmate in possession of a weapon conviction, twenty to forty years' imprisonment for the inmate in possession of a controlled substance conviction, and ten to fifteen years' imprisonment for the assault upon a prison employee conviction. Defendant now appeals as of right his conviction for assault with intent to do great bodily harm.[1] We affirm.

Defendant first argues his convictions for both assault with intent to commit great bodily harm less than murder and assaulting a prison employee violate the constitutional guarantees against double jeopardy. We disagree. Although it is not entirely clear from defendant's brief, we assume defendant's challenge is under the multiple punishment strain of double jeopardy rather than successive prosecution.

Defendant's convictions of both assault with intent to commit great bodily harm and assault of a prison employee do not constitute multiple punishments for the same offense. The guarantee against

multiple punishments for the same offense protects the defendant's interest in not enduring more punishment than the Legislature intended. *People v Denio*, 454 Mich 691, 709; 564 NW2d 13 (1997); *People v Rivera*, 216 Mich App 648, 650; 550 NW2d 593 (1996). In analyzing the Double Jeopardy Clause of the Michigan Constitution,[2] this Court examines the legislative intent underlying the statutes under which defendant was convicted by looking to whether each statute prohibits conduct violative of a social norm distinct from that protected by the other, the amount of punishment authorized by each statute, whether the statutes are hierarchical or cumulative, and the elements of each offense. *Rivera, supra* at 650-651.

The statutes at issue in this case are directed at different social harms. The prohibition against committing an assault on a prison employee specifically addresses the social evil of imprisoned persons using violence against correctional officers. See *People v DeLeon*, 177 Mich App 306, 308-309; 441 NW2d 85 (1989) (addressing the intent of the prohibition against an inmate being in possession of a weapon.) However, the assault with intent to commit great bodily harm statute punishes crimes injurious to people without regard to whether the assault occurs in the prison setting. See *People v Harrington*, 194 Mich App 424, 429; 487 NW2d 479 (1992). Moreover, the statutes contain different elements. In order to convict a defendant of assaulting a prison employee, the prosecution must prove the defendant was lawfully imprisoned and the defendant assaulted an employee of a place of confinement through the use of violence or threat of violence with knowledge that the victim was an employee. MCL 750.197c; MSA 28.393(3). The essential elements of assault with intent to commit great bodily harm are an attempt or offer with force or violence to do corporal hurt to another coupled with the intent to do great bodily harm less than murder. *Harrington, supra* at 428. For these reasons, we conclude the legislature intended to permit a defendant to be convicted of both assault with intent to do great bodily harm and assault of a prison employee. Accordingly, there is no double jeopardy violation in this case.

Defendant also argues he was denied a fair trial because he was forced to wear shackles in the courtroom. We disagree. The trial court's decision to keep defendant in shackles was well supported. The fact that defendant admitting attacking a prison employee as well as his extensive prison misconduct record, which is detailed in the PSIR, justify the court's security concerns in this case. See *People v Dixon*, 217 Mich App 400, 404-405; 552 NW2d 663 (1996). Under the totality of the circumstances, we find the trial court did not abuse its discretion. *Id.*

Moreover, even if the trial court's decision was an abuse of discretion, we would not reverse defendant's conviction because he has failed to show prejudice resulted. *People v Robinson*, 172 Mich App 650, 654; 432 NW2d 390 (1988). The jury was well aware that defendant was a prison inmate. In addition, defendant admitted committing the attack, but claimed he acted under duress and lacked the intent to murder.

Affirmed.

/s/ Gary R. McDonald
/s/ David H. Sawyer
/s/ Joel P. Hoekstra

[1] Defendant filed claims of appeal from all of his convictions. However, this Court dismissed defendant's claim of appeal for inmate in possession of a weapon, inmate in possession of a controlled substance, and assault upon a prison employee for lack of jurisdiction because defendant pleaded guilty to these offenses, which occurred after December 26, 1994. *People v Smothers*, unpublished order of the Court of Appeals, entered June 27, 1997 (Docket No. 202099).

[2] Although defendant's questions presented mentions the federal double jeopardy protections, he does not argue that his convictions violate the federal constitution in the body of his brief and does not cite any federal authority. Accordingly, we decline to address this issue.