

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO WOODS,

Defendant-Appellant.

UNPUBLISHED

May 30, 2000

No. 212867

Wayne Circuit Court

Criminal Division

LC No. 97-010522

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from his sentence of two and one-half to five years in prison for his convictions of receiving or concealing stolen property over \$100, MCL 750.535; MSA 28.803, transfer of a stolen motor vehicle with intent to pass title, MCL 257.254; MSA 9.1954, and habitual offender, fourth offense, MCL 769.12; MSA 28.1084, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with receiving or concealing stolen property over \$100, transfer of a stolen motor vehicle with intent to pass title, false pretenses over \$100, MCL 750.218; MSA 28.415, and concealing or misrepresenting the identity of a motor vehicle with intent to mislead, MCL 750.415; MSA 28.647. In addition, defendant was subject to sentence enhancement as a fourth habitual offender.

The trial court evaluated the case pursuant to *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), and indicated that it would consider a sentence of one to twenty years if defendant pleaded guilty. Defendant rejected the plea offer, and the case proceeded to trial. In the course of a discussion of the rejected offer, the trial court observed that a number of factors went into its evaluation, including the fact that it had heard no testimony, and the fact that by pleading guilty, defendant would obviate the need for a trial. The court found defendant guilty of receiving or concealing stolen property over \$100 and transfer of a stolen motor vehicle with intent to pass title, but acquitted him of false pretenses over \$100 and concealing or misrepresenting the identity of a motor vehicle with intent to mislead. The court sentenced defendant as an habitual offender to two and one-half to five years in prison.

Defendant argues that he was denied due process because the trial court increased his minimum term from one year to two and one-half years as punishment for his decision to exercise his right to a trial. We disagree and affirm defendant's sentence. Although when imposing a sentence a trial court can consider a defendant's waiver of his right to a trial, a court cannot increase a sentence as punishment for a defendant's exercise of his right to a jury or bench trial. *People v Godbold*, 230 Mich App 508, 512, 516-517; 585 NW2d 13 (1998). The prospect of leniency if a right, such as the right to a trial, is waived, is not the equivalent of a penalty for the exercise of that right. *Id.*, 517. In discussing the plea offer and the *Cobbs*, *supra*, evaluation which defendant rejected, the trial court noted various factors which influenced the evaluation, one of which was the waiver of the right to a trial. Such a consideration is proper. *Godbold*, *supra*, 516-517. The trial court did not expressly or impliedly threaten to impose a harsher sentence if defendant exercised his right to a trial. Such a threat cannot be inferred from defendant's expectation of leniency based on the trial court's evaluation of the case at the pre-trial stage. *Id.*, 517. The court's sentence was based on information gleaned during the course of the trial and defendant's prior record. No denial of due process occurred.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra