

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN LEE BOYER,

Defendant-Appellant.

UNPUBLISHED
October 27, 2000

No. 220070
Midland Circuit Court
LC No. 98-008930-FH

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right from his habitual offender sentence of five years, four months to eight years for his conviction of assault of a prison employee, MCL 750.197c; MSA 28.394(3), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The court sentenced defendant as a third habitual offender, MCL 769.11; MSA 28.1083. Defendant's prior convictions, for breaking and entering a building and larceny of a firearm, were obtained on the same day and resulted from incidents that occurred three days apart. Defendant moved for resentencing, arguing that because his prior convictions arose out of the same criminal transaction, they could not be considered as separate convictions for purposes of habitual offender sentencing. The trial court denied the motion, finding that defendant's prior convictions arose out of separate incidents.

Multiple convictions obtained in the same judicial proceeding may count as separate convictions for purposes of application of the habitual offender statutes only if those convictions arose out of separate criminal transactions. *People v Preuss*, 436 Mich 714, 717, 738; 461 NW2d 703 (1990).

Defendant argues that the trial court erred in concluding that his prior convictions could be treated as separate convictions for purposes of sentencing. He contends that because the incidents which resulted in the convictions shared a common purpose, i.e., his preparation to travel to Florida, they were part of the same criminal transaction.

We disagree and affirm defendant's sentence. The habitual offender statutes were intended to be applied to an offender who, after having had an opportunity to reform, continued his criminal

activities. *People v Jones*, 171 Mich App 720, 726-727; 431 NW2d 204 (1988). The incidents which resulted in defendant's prior convictions occurred three days apart and at different locations. Defendant contends that the incidents constituted a single criminal transaction because they were motivated by the same purpose. He cites no authority to support his assertion that an offender's subjective motivation should determine when separate incidents are to be considered a single criminal transaction. After committing the offense of breaking and entering, defendant had the opportunity to reform. He did not take advantage of the opportunity, and committed the offense of larceny of a firearm three days later. The trial court correctly concluded that defendant's prior convictions arose out of separate incidents, and properly sentenced defendant as a third habitual offender. MCL 769.11; MSA 28.1083; *Preuss, supra*; *Jones, supra*.

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage