

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DRAKE D. WEBB,

Defendant-Appellant.

UNPUBLISHED
October 31, 2000

No. 220326
Oakland Circuit Court
LC No. 98-158254-FC

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

PER CURIAM.

Defendant appeals by delayed leave granted his plea-based convictions of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Pursuant to MCL 764.1f(1); MSA 28.860(6)(1), defendant (DOB 1-1-82) was charged as an adult with armed robbery and felony-firearm as a result of an incident in which defendant and two other youths robbed a man at gunpoint. Defendant was sixteen-years-old at the time the incident occurred. The court evaluated the case pursuant to *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), and indicated that it would be inclined to impose a minimum term of eighteen months for the conviction of armed robbery. Regarding the conviction of felony-firearm, the court stated that it would sentence defendant as a youthful trainee if it concluded that the Holmes Youthful Trainee Act (YTA), MCL 762.11 *et seq.*; MSA 28.853(11) *et seq.*, applied. The court noted that if it concluded the YTA did not apply, it would sentence defendant as an adult or a juvenile, at its discretion. Defendant indicated he understood.

The court held a hearing to determine whether defendant should be sentenced as an adult or a juvenile on the conviction of felony-firearm. After hearing testimony from representatives of the Department of Corrections, the Family Independence Agency, and the probation department, all of whom recommended defendant be sentenced as an adult, the court denied defendant YTA status on the conviction of felony-firearm. The court concluded that when all factors were considered, an adult sentence was appropriate. The court sentenced defendant as an adult to one and one-half to twenty

years' for the conviction of armed robbery, and to a consecutive two-year term, with credit for 122 days, for the conviction of felony-firearm.

Initially, defendant argues that the amendments to MCL 769.1; MSA 28.1072 enacted by 1996 PA 247, allowing a prosecutor to determine if a juvenile will be tried as an adult under certain enumerated circumstances, and requiring a court to sentence a juvenile as an adult if convicted of any of the enumerated crimes, violates federal and state guarantees of equal protection and separation of powers. We disagree. In *People v Conat*, 238 Mich App 134; 605 NW2d 49 (1999), another panel of this Court considered and rejected these same arguments. For the reasons stated in that decision, we find defendant's arguments to be without merit.

Next, defendant argues he should be entitled to withdraw his plea to the charge of felony-firearm for the reason that the adult sentence he received for that offense did not comport with the *Cobbs, supra*, agreement. Specifically, defendant contends the court agreed to sentence him to YTA status or to a juvenile term. We disagree. The record indicates the court agreed to place defendant on youthful trainee status if it found the YTA was applicable. Otherwise, it would impose either an adult or a juvenile sentence. Upon finding the YTA was inapplicable, a conclusion which defendant does not contest on appeal, the court imposed an adult sentence. The sentence imposed by the court conformed to the *Cobbs, supra*, agreement. Defendant's argument that his plea was not understanding and voluntary was not preserved by the filing of a motion to withdraw the plea in the trial court; therefore, we decline to address the issue on appeal. MCR 6.311(C).

Finally, defendant argues the trial court abused its discretion by sentencing him as an adult on the conviction of felony-firearm when an analysis of the relevant factors mitigated in favor of a juvenile sentence. MCL 769.1(3); MSA 28.1072(3); MCR 6.931(E)(3); *People v Cheeks*, 216 Mich App 470, 474; 549 NW2d 584 (1996). We disagree. Defendant pleaded guilty to using a firearm to commit the offense of armed robbery. He pointed a gun at another person and demanded that person's property. The seriousness of the offense and defendant's culpability therein mitigated in favor of an adult sentence. MCL 769.1(3)(a) and (b); MSA 28.1072(3)(a) and (b). Defendant's lack of a prior record mitigated in his favor. MCL 769.1(3)(c); MSA 28.1072(3)(c). However, defendant's record of disruptive behavior in school, including truancy and fighting, demonstrated a lack of willingness on his part to participate meaningfully in available programming. MCL 769.1(3)(d); MSA 28.1072(3)(d). The court concluded that either the adult or the juvenile system could provide adequate punishment and programming, MCL 769.1(3)(e); MSA 28.1072(3)(e), and that the dispositional options worked in defendant's favor. MCL 769.1(3)(f); MSA 28.1072(3)(f). Given the factors did not weigh heavily in defendant's favor, and given the seriousness of the incident in which defendant participated, we cannot conclude that the trial court abused its discretion by imposing an adult sentence for the offense of felony-firearm. See *People v Black*, 203 Mich App 428, 430-431; 513 NW2d 152 (1994).

Affirmed.

/s/ Richard Allen Griffin
/s/ Mark J. Cavanagh
/s/ Hilda R. Gage