

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM ROSS,

Defendant-Appellant.

UNPUBLISHED

January 30, 2001

No. 217112

Wayne Circuit Court

Criminal Division

LC No. 98-007653

Before: Neff, P.J., and Holbrook, Jr., and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of unarmed robbery, MCL 750.530; MSA 28.798, assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and third-degree fleeing and eluding a police officer, MCL 750.479a(3); MSA 28.747(1)(3). Defendant was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to a term of twenty-one to forty years' imprisonment. We affirm defendant's convictions, but remand for resentencing.

Defendant first asserts that he was improperly impeached with evidence of a non-existent prior conviction for receiving or concealing stolen property over \$1000. However, although defendant objected to the use of the alleged conviction at trial, he did so on other grounds than now cited on appeal. "An objection based on one ground at trial is insufficient to preserve an appellate attack based on a different ground." *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). Accordingly, we review the alleged error under the plain error rule. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Assuming that defendant has established plain error, we conclude that defendant has not shown that reversal is warranted because the forfeited error resulted in the conviction of an actually innocent defendant or when an error "“seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings’ independent of the defendant’s innocence.”” *Id.* at 763-764, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993) (quoting *United States v Atkinson*, 297 US 157, 160; 56 S Ct 391; 80 L Ed 555 [1936]).

Next, defendant argues that he did not receive the effective assistance of counsel because he was not adequately informed about the consequences of proceeding to trial in lieu of accepting a plea offer. We disagree. For various reasons, defendant was represented by three different attorneys during the course of the proceedings below. Defendant's ineffective assistance

argument implicates all three attorneys, given that each was involved at some point with the ongoing plea negotiations. “To prove a claim of ineffective assistance of counsel . . . , a defendant must show that counsel’s performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense so as to deny defendant a fair trial.” *People v Smith*, 456 Mich 543, 556; 581 NW2d 654 (1998). “Effective assistance is presumed, and the defendant bears a heavy burden of proving otherwise.” *People v Noble*, 238 Mich App 647, 661-662; 608 NW2d 123 (1999).

The trial court considered this issue at a post-trial evidentiary hearing. Affording deference to the trial court’s findings of fact, see *People v Alexander*, 234 Mich App 665, 670; 599 NW2d 749 (1999), we conclude that defendant did not meet his burden of showing that the performance of his three counsels fell below an objective standard of reasonableness. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000); *People v Noble*, 238 Mich App 647, 661-662; 608 NW2d 123 (1999). The record reflects that defendant was provided with the requisite information to make an informed decision about whether to accept or reject the prosecution’s plea offers and sentence agreements. *People v Effinger*, 212 Mich App 67, 71; 536 NW2d 809 (1995). “Counsel cannot . . . ensure comprehension.” *People v Thew*, 201 Mich App 78, 97; 506 NW2d 547 (1993).

Finally, we have considered defendant’s claims regarding his sentence as a fourth habitual offender. It is apparent from the presentence report, which was not challenged by either party, that the 1990 conviction upon which the trial court relied to establish defendant’s status as a fourth habitual offender, was factually inaccurate. A sentence based on inaccurate information is invalid. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). Hence, even though this issue was not raised at sentencing, we conclude that defendant has established the requisite plain error affecting his substantial rights to justify sentencing relief. *Carines, supra* at 763.

Having concluded that defendant has established plain error warranting resentencing, it is unnecessary to address defendant’s alternative claim that counsel was ineffective for failing to expressly challenge the accuracy of the 1990 conviction set forth in the amended information. Our decision also renders it unnecessary to address defendant’s claim that his habitualized sentence is disproportionate.

On remand, we remind the trial court that MCL 769.13; MSA 28.1085, as amended, no longer requires the bifurcated sentencing procedure that was required under the former version of the statute. See *People v Green*, 228 Mich App 684, 699; 580 NW2d 444 (1998). While the trial court’s discretion whether to impose enhanced punishment is retained under the current version of the statute, the statute does not create a substantive offense, but rather provides a mechanism for sentence enhancement. *People v Zinn*, 217 Mich App 340, 345; 551 NW2d 704 (1996). The underlying felony is still considered in determining an appropriate sentence. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997). Hence, on remand, the trial court, within its discretion, should separately consider whether to impose an enhanced sentence for each of defendant’s convictions, rather than impose a single sentence.

Affirmed in part and remanded for resentencing. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Donald E. Holbrook, Jr.

/s/ Kathleen Jansen