

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AARON EUGENE SCHEIB,

Defendant-Appellant.

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UNPUBLISHED

November 20, 2001

No. 225054

Kent Circuit Court

LC No. 99-002169-FH

Before: Owens, P.J., Holbrook, Jr. and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2). The trial court sentenced defendant as a third habitual offender, MCL 769.11, to four to forty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant claims that the trial court erred by allowing evidence to be presented concerning his flight from police. Generally, a trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Cain*, 238 Mich App 95, 122; 605 NW2d 28 (1999). An abuse of discretion will be found only where "an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made." *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000).

In the instant matter, however, because defense counsel failed to object to the introduction of the flight evidence, the trial court's discretion was never invoked. Accordingly, defendant has forfeited appellate review of this issue. Nevertheless, defendant may avoid forfeiture under the "plain error" rule where the following three requirements are met: (1) error must have occurred, (2) the error was plain, i.e. clear or obvious, and (3) the plain error affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Generally, the third requirement requires a showing of prejudice—that the error affected the outcome of the lower court proceedings. *Id.* Once the defendant satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse. *Id.* Reversal is warranted only when the plain, 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.

"It is well established in Michigan law that evidence of flight is admissible" and probative as to showing "consciousness of guilt." *People v Coleman*, 210 Mich App 1, 4; 532

NW2d 885 (1995). Here, in addition to fleeing, there was evidence that defendant attempted to dispose of inculpatory evidence. In addition, eyewitnesses testified at trial. Therefore, this was not a situation where the evidence of flight was the sole evidence of defendant's guilt. See *id.* Given the probative value of the evidence, we believe that the trial court would have been well within its discretion to admit the flight evidence. Accordingly, we are not persuaded that the admission of the evidence of flight was erroneous, much less plainly erroneous, and we reject defendant's challenge to its admission.

Defendant also asserts that his sentence was improperly based upon the fact that he failed to plead guilty. Again, defendant's failure to object below would, in most circumstances, require us to review this issue solely to determine whether defendant may avoid forfeiture under the "plain error" rule.<sup>1</sup> *Carines, supra* at 763-764. However, defendant was sentenced under the legislative sentencing guidelines; in fact, defendant's four-year minimum sentence fell within the recommended sentencing range of thirty-six to ninety months' imprisonment. Thus, appellate review of his sentence is precluded in the absence of scoring errors or the reliance on inaccurate information. *People v Bacbock*, 244 Mich App 64, 73; 624 NW2d 479 (2000), citing MCL 769.34(10). Defendant does not allege a scoring error, nor does he contend that inaccurate information was relied on in applying the guidelines. Therefore, we are statutorily required to affirm his sentence.

Finally, defendant claims that defense counsel's failure to object on the above grounds deprived him of his constitutional right to effective assistance of counsel. Because defendant did not request a new trial or an evidentiary hearing on this issue, our review is limited to the facts on the record. *Snider, supra* at 423. A successful claim of ineffective assistance of counsel requires a defendant to "show that counsel's performance was deficient and that there is a reasonable probability that, but for the deficiency, the factfinder would not have convicted the defendant." *Id.* at 423-424. Having found no error with respect to either substantive issue raised on appeal, we cannot conclude that defense counsel's failure to object was deficient, nor can we conclude that timely objections would have had any impact on the result of the proceedings. Indeed, defense counsel is not required to make meritless objections. *People v Kulpinski*, 243 Mich App 8, 27; 620 NW2d 537 (2000).

Affirmed.

/s/ Donald S. Owens  
/s/ Donald E. Holbrook, Jr.  
/s/ Hilda R. Gage

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<sup>1</sup> Avoiding forfeiture in the instant matter would have been very unlikely given that the record contains absolutely no indication that the trial court's sentence was based, even in part, on defendant's failure to plead guilty. Although defendant may have rejected a plea offer, it does not automatically follow that the trial court was aware of, or relied on, this fact during sentencing.