

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALEXANDER CARL MORRIS,

Defendant-Appellant.

UNPUBLISHED

November 22, 2002

No. 234064

Calhoun Circuit Court

LC No. 00-003914-FH

Before: Markey, P.J., and Saad and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for first-degree home invasion, MCL 750.110a(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant asserts that he was denied a fair trial where the court allowed a prosecution witness to be recalled to the stand after hearing other witnesses' testimony. At the request of a party, a trial court has the discretion to order the sequestration of witnesses. MRE 615; *People v Nixten*, 160 Mich App 203, 209-210; 408 NW2d 77 (1987). Defendant did not request a sequestration order, and he did not object when the witness was recalled to the stand. Defendant did not call upon the trial court to exercise its discretion. He failed to preserve this issue, and there is no plain error. *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999).

Defendant's minimum sentence was within the legislative sentencing guidelines range. The legislative guidelines do not violate the separation of powers. The ultimate authority to provide for penalties is constitutionally vested in the Legislature. Const 1963, art, § 45. The authority to impose sentences and to administer the sentencing statutes lies with the judiciary. *People v Hegwood*, 465 Mich 432, 436-437; 636 NW2d 127 (2001). It is the responsibility of the circuit judge to impose a sentence, but only within the limits set by the Legislature. *Id.* Where the sentence was within the guidelines range and there was no scoring error or inaccurate information, this Court is required to affirm the sentence. MCL 769.34(10). There is no showing that the trial court failed to recognize its discretion in enhancing defendant's maximum sentence as a habitual offender. MCL 769.11; *People v Mauch*, 23 Mich App 723; 179 NW2d 184 (1970).

Affirmed.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Michael R. Smolenski