

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROLAND H. STEVENS,

Defendant-Appellant.

UNPUBLISHED

February 3, 2004

No. 243082

Oakland Circuit Court

LC No. 2001-182120-FH

Before: Owens, P.J., and Schuette and Borrello, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of third degree fleeing and eluding a police officer in violation of MCL 750.479a(3). He was erroneously sentenced as a fourth habitual offender and sentenced to 1 ½ to 5 years' imprisonment. We affirm defendant's conviction and sentence but remand to the trial court the ministerial task of correcting defendant's presentence investigation report (PSIR).

Defendant asserts that there was insufficient evidence to support his conviction. We disagree. We review claims regarding sufficiency of the evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In determining whether sufficient evidence was presented at trial to sustain a criminal conviction, we view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). A verdict can be based on circumstantial evidence and the reasonable inferences drawn from that evidence. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). The jury determines what inferences can be drawn from the evidence and what weight to give each inference in its deliberation. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

In particular, defendant challenges the sufficiency of the evidence presented at trial that he knew the police had ordered him to stop. The jury heard testimony that the uniformed police officers who eventually stopped defendant were patrolling during the quiet, pre-dawn hours when defendant nearly hit their fully marked patrol vehicle after failing to stop at a stop sign. The officers testified that when they turned on the flashing overhead lights of the patrol vehicle to pull defendant over, defendant pulled into the far left lane and accelerated. The police then turned on the siren, air horn, and spotlights. Defendant turned left, and the officers pulled in front of defendant and blocked his path. Despite the fact that the attempt to stop defendant lasted

only a few hundred yards, from this testimony the jury could reasonably infer that defendant, traveling in a dark and quiet neighborhood, realized that the police, who were directly behind him using flashing lights, siren, horn, and spotlights, were ordering him to stop. Therefore, plaintiff offered sufficient evidence to support the jury's conviction of defendant for third degree fleeing and eluding a police officer. See *People v Grayer*, 235 Mich App 737; 599 NW2d 527 (1999) (holding less intrusive means by police officers sufficient to justify a conviction for fleeing and eluding.)

Defendant also asserts that he is entitled to resentencing because his original sentence was based on incorrect information regarding the number of his prior felony convictions. This issue is moot. Defendant's minimum sentence of 1 ½ years began on June 14, 2002, and he was given credit for 251 days served. Therefore, he completed his minimum sentence on April 7, 2003. Where a defendant has already served his minimum sentence, we decline to review the sentence because it is impossible to fashion a remedy. *People v Rutherford*, 208 Mich App 198, 204 (1994). Furthermore, defendant's maximum sentence is not implicated by considering the incorrect number of prior felonies. Even though defendant was sentenced as a habitual offender, and the relevant habitual offender statutes (MCL 769.11 and MCL 769.12) permit enhancement of a maximum sentence, defendant's maximum sentence was not in fact enhanced. His maximum sentence was five years, which is the maximum sentence under the statute for fleeing and eluding. Plaintiff concedes that the information in defendant's PSIR regarding defendant's prior felony convictions is incorrect.

Because defendant has the right to proper sentencing, we remand to the trial court for the sole act of correcting the defendant's PSIR to reflect the actual number of defendant's prior felonies. We therefore affirm defendant's conviction and sentence, but remand to the trial court for correction of defendant's PSIR.

We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Bill Schuette

/s/ Stephen L. Borrello