

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DENNIS WHITE,

Defendant-Appellant.

UNPUBLISHED

October 12, 2004

No. 248218

Jackson Circuit Court

LC No. 02-005693-FH

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right his conviction for breaking and entering with intent to commit larceny, MCL 750.110, following a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant broke into a building and took change from a cashbox. The police apprehended defendant after he attempted to flee the area. He had a large quantity of change and the key to the cashbox in his pocket. The statutory sentencing guidelines provided a range of 19 to 76 months for defendant's minimum term of incarceration. The trial court rejected defendant's contention that the guidelines were scored incorrectly and sentenced him as a fourth habitual offender to 2½ to 5 years in prison.

Defendant argues that trial counsel's failure to move for a directed verdict at the close of the prosecution's case constituted ineffective assistance. We disagree. Defendant did not move for a new trial or an evidentiary hearing on the issue of ineffective assistance in the trial court, so our review is limited to mistakes apparent on the record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). The evidence showed that a cashbox had been opened and loose change had been removed. Defendant was apprehended in the immediate vicinity of the building with a large quantity of loose change and a key to the cashbox. Given defendant's later conviction, he fails to persuade us that the trial court would have rejected the strong evidence presented by the prosecutor and granted defendant's motion for directed verdict. Trial counsel did not render ineffective assistance by failing to make a meritless motion. *People v Riley (After Remand)*, 468 Mich 135, 141-142; 659 NW2d 611 (2003).

Defendant next asserts that his sentence is disproportionate to his circumstances and the offense. We disagree. The trial court actually lowered, by half, defendant's maximum sentence from what it would have been if the trial court had not sentenced him as an habitual offender.

Moreover, even if we agreed with defendant that the guidelines should have recommended a range of 0 to 30 months for defendant's minimum term after excluding older felonies, his current minimum sentence fits within this range. Ultimately, defendant's sentence is proportionate given his history of felonies and the seriousness of this crime. *People v Babcock*, 469 Mich 247, 264; 666 NW2d 231 (2003).

Affirmed.

/s/ Richard Allen Griffin

/s/ Henry William Saad

/s/ Peter D. O'Connell