STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 3, 2008
v	No. 275447 Tuscola Circuit Court
MANGUS SAINT SUTTON, Defendant-Appellant.	LC No. 06-009853-FH

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

PER CURIAM.

Defendant appeals as of right from his convictions of one count of breaking and entering with the intent to commit a felony or larceny, MCL 750.110, one count of conspiracy to break and enter with intent to commit a felony or larceny, MCL 750.157a; MCL 750.110, one count of larceny of $1,000 to less than $20,000, MCL 750.356(3)(a), one count of conspiracy to commit larceny of $1,000 to less than $20,000, MCL 750.157a; MCL 750.356(3)(a), one count of larceny in a building, MCL 750.360, and one count of conspiracy to commit larceny in a building, MCL 750.157a; MCL 750.360. Defendant was sentenced as a fourth-offense habitual offender, MCL 769.12, to nine years and six months each for the breaking and entering with intent to commit a felony and conspiracy to commit breaking and entering with intent to commit a felony counts, to 2 years to 15 years each for the larceny of $1,000 to less than $20,000 and the conspiracy to commit a larceny of $1,000 to less than $20,000 counts, and to 3 years, 10 months to 15 years each for the larceny in a building and conspiracy to commit larceny in a building counts. Defendant received no credit for the time he was in jail before trial. We affirm.

I. FACTS

On December 21, 2005, defendant, Brandon Anderson, and Justin Moreau, drove to Fairgrove in defendant's car, with the intent to break into a store. All three men wore dark clothing, ski masks, and rubber gloves. While at the store, Anderson and Moreau stuffed cigarettes into garbage bags, while defendant was near the back of the store. They later sold some of the cigarettes in exchange for cocaine, which all three shared. An employee testified that she came to work and found the store in disarray, similar to a break-in that had occurred during the previous week.

Authorities searched two apartments where Anderson and Moreau were staying and found ski masks, cigarettes, rubber gloves, a tire iron, a hooded sweatshirt, and a Ford Thunderbird parked outside. Anderson and Moreau admitted to the break-in. Later, defendant admitted to an officer that "he had been strung out on cocaine" and "had done some things he shouldn't have."

Sheriff's deputies searched defendant's apartment and found cigarettes, as well as shoes and clothes resembling the shoes and clothes in the store surveillance video. Defendant's roommate testified that she allowed defendant to use her Ford Thunderbird in December of 2005. She further identified the shoes and sweatshirts seized as the defendant's. The jury convicted defendant on all counts.

II. SUFFICIENCY OF THE EVIDENCE

Defendant argues that there was insufficient evidence against him because the primary evidence against him, the testimony of his two co-conspirators, was not credible because their plea bargains gave them strong motive to lie and because the evidence primarily pointed at them, not defendant, as involved in the crime. We disagree.

A. Standard of Review

To determine whether there was sufficient evidence to support a conviction, we review the evidence de novo, in the light most favorable to the prosecution, and decide whether any rational fact-finder could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

B. Analysis

We must reject defendant's argument because "questions regarding the credibility of witnesses are left to the trier of fact." *People v Pena*, 224 Mich App 650, 659; 569 NW2d 871 (1997), modified on other grounds by 457 Mich 885 (1998).

III. ADMISSIBILITY OF MRE 404(B) EVIDENCE

Defendant next argues that he was denied a fair trial because the admission into evidence of his alleged prior break-in of the same store and subsequent break-in at another store was the admission of evidence that had no other purpose except to show that he was a bad person with the propensity to commit these offenses. Again, we disagree.

A. Standard of Review

A trial court's decision whether to admit evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). A preliminary question of law regarding the admissibility of evidence is reviewed de novo. *Id.*

B. Analysis

MRE 404(b)(1) sets forth the standards for the admission of other acts evidence. It provides as follows:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

For evidence to be admissible under MRE 404(b), it must be offered for a proper purpose, must be relevant, and its probative value must not be substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004). A proper purpose is one other than showing the defendant's propensity to commit the offense. *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), amended on other grounds 445 Mich 1205 (1994). The prosecutor has the burden of showing the evidence is relevant. *Knox*, *supra* at 509. Admission of the evidence would be unfairly prejudicial if there is a danger that marginally probative evidence will be given undue weight by the jury. *People v Ortiz*, 249 Mich App 297, 306; 642 NW2d 417 (2001).

The evidence of the other break-ins was admitted for the purpose of showing a common plan or scheme, a proper purpose under MRE 404(b). This evidence was relevant because it showed a common pattern of behavior: robbing of convenience stores while closed at night, of cigarettes and alcohol while wearing dark clothing, ski masks, and gloves. That similarity in plan and methodology gives strong probative value to the evidence, making it unlikely that it would be outweighed by the usual danger of unfair prejudice when evidence of other wrongful acts is admitted. And the jurors were properly instructed of the limited purpose they were to use this evidence for. Thus, it was proper to admit evidence of those two break-ins, and the trial court did not abuse its discretion in doing so.

Defendant claims that the trial court erred by not admitting evidence of a September break-in to the Fairview Gas and Oil. Defendant does not indicate exactly how the prior break-in would have been relevant, other than to suggest that if it was a similar sort of break-in, and someone else did it, then perhaps defendant did not do this break-in. But there is nothing on the record to indicate what might have been similar about that break-in. Defendant indicates that it involved the theft of cigarettes and lottery tickets, but these simply could be the most valuable portable items in such a store. There was no indication that it was done, for instance, by dark-clothed, ski-masked men wearing gloves. Without a sufficient specific commonality to the offenses in this case, the fact that the store had a prior break-in months earlier does not seem particularly relevant. Thus, the trial court did not err when it declined to allow this prior break-in into evidence because any weak probative value it had could easily be regarded as substantially outweighed by the danger of confusing the issues or wasting time. MRE 403.

IV. ADMISSIBILITY OF EXPERT TESTIMONY

Defendant also argues that he was denied a fair trial by the trial court's admission of expert testimony regarding comparisons in height using still photos taken from the video surveillance of the store. We disagree.

A. Standard of Review

Again, a trial court's decision whether to admit evidence is reviewed for an abuse of discretion. *Lukity, supra* at 488.

B. Analysis

Defendant claims that the height comparison was not properly established as a reliable test under MRE 702. MRE 702 states:

> If the court determines that scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Under this rule, the trial court is required to act as a gatekeeper to prevent unreliable expert testimony from being admitted as evidence. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 779-780; 685 NW2d 391 (2004). It requires courts to exclude "junk science" and consider more than just general acceptance in determining whether expert testimony is admissible. *Id*. at 782. The gatekeeper role applies to all stages of expert analysis, including the data underlying the testimony and the manner in which that data is interpreted and extrapolated from by the expert. *Id*. Even if the data is legitimate, the proponent must show "that any opinion based on those data expresses conclusions reached through reliable principles and methodology." *Id*.

The relevant witness's testimony regarding height comparisons and comparisons of stride were not based on some new and novel scientific concepts. Comparing heights while considering the angle of view (like from a camera mounted near a ceiling) is nothing more than basic geometry and perspective, something most lay people are familiar with. Comparing strides is also something lay people generally could do just by watching. In short, there was nothing particularly novel or complicated about the sort of comparisons done here.

Moreover, even if this evidence was inadmissible, it is doubtful it had any impact on the ultimate verdict. Jurors could make their own height comparisons, looking at the tape and defendant. And a similar stride or height was not the strongest evidence against defendant—the strongest evidence against him was the testimony of his two alleged accomplices saying that he was there and that he participated in the break-ins. Thus, the expert testimony, even if it was erroneously admitted, was harmless. See *People v Smith*, 243 Mich App 657, 680; 625 NW2d 46 (2000) (A trial court's error is no basis for reversal where the error was not outcome determinative or was, in other words, harmless).

V. MISSING WITNESS JURY INSTRUCTION

Defendant claims that the trial court erred by not giving the jury instruction that allows one to draw an inference that a missing witness would have testified unfavorably to the prosecution based on the prosecution's failure to produce one of its witnesses, Donald Anderson. The trial court declined to give this instruction because there was no "basis for at least suggesting that the witness might contribute to the defense in some way in order for the instruction to be justified." We disagree with defendant's assertion.

A. Standard of Review

"We review a trial court's determination of due diligence and the appropriateness of a 'missing witness' instruction for an abuse of discretion." *People v Eccles*, 260 Mich App 379, 389; 677 NW2d 76 (2004).

B. Analysis

"A prosecutor who endorses a witness under MCL 767.40a(3) is obliged to exercise due diligence to produce that witness at trial." *Id*. at 388. "A prosecutor who fails to produce an endorsed witness may show that the witness could not be produced despite the exercise of due diligence." *Id*. "If the trial court finds a lack of due diligence, the jury should be instructed that it may infer that the missing witness's testimony would have been unfavorable to the prosecution's case." *Id*.; see also CJI2d 5.12.

Absent from the factors to consider in deciding whether the "missing witness" jury instruction is appropriate is any mention of what the witness might actually say. Thus, the trial court erred where it used as a basis for not giving the instruction defendant's failure to show that the witness would have said something not favorable to the prosecution. Regardless, this case primarily rested on the testimony of defendant's two co-conspirators. An additional jury instruction that an apparent relative to one of those co-conspirators might have had something to say that favored defendant and was unfavorable to the prosecution might have given some jurors pause. But we conclude that ultimately, adding that jury instruction, by itself, most likely would not have altered the result, and so any error by its omission does not warrant reversal. *Smith*, *supra* at 680.

VI. PROSECUTORIAL MISCONDUCT

Defendant next argues that the prosecutor committed misconduct by not fully disclosing the original charges against defendant's co-conspirators nor what prison terms they could have gotten as part of describing their plea bargains. We disagree.

A. Standard of Review

"Generally, a claim of prosecutorial misconduct is a constitutional issue reviewed de novo." *People v Abraham*, 256 Mich App 265, 272; 662 NW2d 836 (2003). But unpreserved claims of error may only be reviewed for plain error. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). With regard to such unpreserved claims, "[r]eversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected

the fairness, integrity, or public reputation of judicial proceedings." *Id*. Reversal is not required "where a curative instruction could have alleviated any prejudicial effect." *Id*. at 329-330.

B. Analysis

Prosecutorial misconduct claims are reviewed on a case-by-case basis, looking at the prosecutor's comments in context and in light of the defense arguments and their relationship to evidence admitted at trial. *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004). A prosecutor may not argue facts not entered into evidence, *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994), but may otherwise argue the evidence and all reasonable inferences it creates. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

Defendant does not cite any authority to indicate there is any requirement of disclosing the original charges against defendant's co-conspirators nor what prison terms they could have gotten as part of describing their plea bargains. The prosecutor is required to give all of the details of a co-conspirator's plea agreement. *People v Dowdy*, 211 Mich App 562, 570-571; 536 NW2d 794 (1995). The prosecutor did so, and defendant does not claim otherwise. Thus, it was not plain error for the prosecutor to have failed to present further information in this regard at trial.

Defendant argues that the prosecutor also committed misconduct by bringing out highly prejudicial, irrelevant information by eliciting an officer's opinion that the height and stride were similar between two people in two videos, by a witness testifying that the defendant told his girlfriend he was at work so she would not know where he was, by a witness testifying that she heard Justin Moreau telling defendant there was a need for getting a new car for getting away and to not park close by (with no response from defendant and no timeframe specified), by statements from Officer May that defendant was strung out on cocaine and had done some things he should not have done and was "not innocent" where none of these statements were tied to anything in this case, and by evidence of a small amount of cigarettes and liquor in defendant's home with no showing that it came from any of the break-ins. But none of this is misconduct.

First, asking a witness to opine about height comparisons is a valid subject for direct examination. And comparing height of a suspect on a surveillance photo to defendant's height is quite relevant. Second, testimony about defendant lying about his whereabouts is not relevant just for his credibility, but is also relevant to show that wherever defendant was, he had some reason to conceal it, and one reason might be that he was engaging in illegal activities. Third, testimony about an overheard conversation between Moreau and defendant is also highly relevant as Moreau was discussing use of defendant's vehicle as a getaway car, a conversation that one would not expect to take place in any innocent context. Fourth, while it is true that defendant's statements regarding being strung out on cocaine and not being innocent were not expressly connected to this case, they were made in the context of defendant having been arrested for the crimes charged in this case, and so it was reasonable to introduce those statements into evidence because it could reasonably be inferred defendant was referring to this case. Finally, there was no claim that the cigarettes and alcohol found at defendant's residence were definitely from the break-in, but since those were of the class of items that were stolen, it was relevant to mention that they were found. In sum, the prosecutor did not commit any misconduct through bringing up any of this testimony.

Defendant further argues that the prosecutor committed misconduct by arguing that defendant and his co-conspirators were a "crime wave" and so invited the jury to do its "civic duty" to fight this "crime wave." But where the prosecutor referred to a "crime wave" he seemed to be referring to defendant's co-conspirators, not defendant, as part of an admission that the two star witnesses against defendant were not upstanding citizens. Certainly, defendant is not prejudiced by disparaging the two witnesses against him. And, in this context, the mere reference to a "crime wave" is not reasonably considered an appeal to civic duty. At minimum, there was no plain error in these remarks. *Callon, supra* at 329.

Defendant also contends that the prosecutor committed misconduct by calling the defendant's arguments a "red herring," which was unfair because the rules of evidence already keep out irrelevant evidence, so to imply that defendant's evidence is a "red herring" is to tell the jury that it is not relevant when the trial court has already ruled it is relevant by admitting it. But this was proper argument as merely a colorful way for the prosecutor to argue that the jury should focus on the important issues, not on other issues that the prosecutor argues are not important. A prosecutor need not argue a case in the blandest possible terms. *People v Matuszak*, 263 Mich App 42, 55-56; 687 NW2d 342 (2004). And even if this phrase was problematic, it would have been cured by the instructions to the jury that the attorneys' arguments are not evidence.

Defendant's claim that, if none of the individual claims of misconduct are enough to warrant reversal, taken in the aggregate, they require giving defendant a new trial is also without merit because, as discussed above, none of the claims are individually prejudicial misconduct, so added together, they add up to nothing. Defendant is not entitled to reversal based upon any of his claims of prosecutorial misconduct.

VII. SENTENCING

Defendant argues that he is entitled to resentencing. We disagree.

A. Standard of Review

"A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). "This Court reviews a sentencing court's scoring decision to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score." *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

B. Analysis

1. Judicial Factfinding

Defendant argues that he was denied his constitutional due process right to a fair trial by the trial court's use of facts not found beyond a reasonable doubt by the jury to increase his sentencing guideline sentence score. However, "a defendant does not have a right to anything less than the maximum sentence authorized by the jury's verdict, and, therefore, judges may make certain factual findings to select a specific minimum sentence from within a defined

range." *People v Drohan*, 475 Mich 140, 159, 164; 715 NW2d 778 (2006). "As long as the defendant receives a sentence within that statutory maximum, a trial court may utilize judicially ascertained facts to fashion a sentence within the range authorized by the jury's verdict." *Id*. at 164. Thus, the trial court did not err when it made findings independent of the jury on issues that only affected defendant's sentencing guidelines score. We note that defendant claims *Drohan* was wrongly decided. However, *Drohan* is binding on this Court, so we must reject defendant's argument.

2. OV 13

Defendant next argues that he was improperly scored ten points for Offense Variable (OV) 13 for being part of an organized criminal group because defendant was not part of any gang or criminal organization. We disagree.

OV 13 is scored where there is a "continuing pattern of criminal behavior." MCL 777.43(1). OV 13 is scored ten points where "[t]he offense was part of a pattern of felonious criminal activity directly related to membership in an organized criminal group." MCL 777.43(1)(d). "The presence or absence of multiple offenders, the age of the offenders, or the degree of sophistication of the organized criminal group is not as important as the fact of the group's existence, which may be reasonably inferred from the facts surrounding the sentencing offense." MCL 777.43(2)(b).

There was testimony that defendant, on not one, but three occasions got together with the same individuals, dressed in dark clothing, ski masks, and gloves for the purpose of breaking into and stealing cigarettes (and other things) from convenience stores late at night. This strongly suggests that there was a group that comprised defendant and his two co-conspirators that regularly engaged in planned criminal activity. Thus, there was evidence that defendant committed this offense as part of membership in a criminal group, and a scoring decision will be upheld where there is any evidence in the record to support it. *People v Kegler*, 268 Mich App 187, 190; 706 NW2d 744 (2005). Therefore, the trial court did not err when it scored defendant ten points for OV 13.

3. OV 14

Defendant further argues that he was also improperly scored ten points for OV 14 for being the leader of a multiple-offender crime because there was no evidence presented that defendant was in charge beyond defendant's suggestion of the place to rob and defendant's longer criminal record. We disagree.

OV 14 is scored based on an offender's role in a crime. MCL 777.44. OV 14 is scored ten points where "[t]he offender was the leader in a multiple offender situation." MCL 777.44(1)(a). "The entire criminal transaction should be considered when scoring this variable." MCL 777.44(2)(a). "If 3 or more offenders were involved, more than 1 offender may be determined to have been a leader." MCL 777.44(2)(b).

The prosecutor argued that defendant was a leader because his accomplices "did not have any type of felony record prior to having contact with this defendant" and because they did not know about the locations broken into—their locations came from defendant. The trial court held that "because of the fact that the locations of the offenses in this case were determined by [defendant], the others went along with that," the trial court scored ten points for OV 14. Being the one to select the location of a criminal act can be reason to consider that person the leader of a criminal enterprise, particularly when combined with defendant's longer criminal record, and a scoring decision will be upheld where there is any evidence in the record to support it. *Kegler*, *supra* at 190. Thus, the trial court did not err when it scored defendant ten points for OV 14.

VIII. HABITUAL OFFENDER ENHANCEMENT

Defendant argues that he should have been convicted as a third-offense habitual offender, not a fourth-offense habitual offender, because two of his three prior offenses were part of the same transaction, and so should only have been counted as a single felony. We disagree.

A. Standard of Review

Whether two felonies on the same day are to be considered one or two felonies for habitual offender purposes is a question of law. Questions of law are reviewed de novo. *Brown v Loveman*, 260 Mich App 576, 591; 680 NW2d 432 (2004).

B. Analysis

Under Michigan's habitual offender act, MCL 769.10 *et seq.*, offenders with prior felony convictions obtain longer sentences, based on the number of previous felony convictions. But not every previous felony is counted; multiple felonies committed as part of the same "transaction," "incident," or "episode" are counted as a single felony for habitual-offender purposes. *People v Preuss*, 436 Mich 714, 738; 461 NW2d 703 (1990). While it sets the rule, *Preuss* does not define what a "transaction," "incident," or "episode" means, "except to note that because defendant's two breaking and entering charges from June of 1985 were separated by several days and occurred at different locations, they were properly counted separately." *Id*. Our Supreme Court later held that two breaking and enterings committed within an hour of each other in adjacent buildings, as part of a crime spree, were considered sufficiently separate to count as two separate felonies for habitual-offender purposes. *People v Hampton*, 439 Mich 860; 475 NW2d 822 (1991).

Defendant broke out of his room at Maxey Boy's Training School and then subsequently stole a car from a vehicle transmission shop across the street from the school. Like the two break-ins in *Hampton*, we conclude that defendant's breaking out and stealing a car are sufficiently separate transactions to count as two separate felonies for habitual-offender purposes. Thus, defendant was properly charged as a fourth-offense habitual offender.

IX. JAIL CREDIT

Defendant argues that he was entitled to 203 days' jail credit for the time he spent incarcerated while awaiting trial and sentencing because MCL 769.11b requires it, regardless of whether defendant was on parole at the time. We disagree.

A. Standard of Review

Statutory interpretation is a question of law that is reviewed de novo. *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003). The goal of statutory interpretation is "to ascertain and give effect to the intent of the Legislature." *Id.* If the meaning of a statute is clear and unambiguous, further construction is neither required nor permitted. *Id.* "Unless defined in the statute, every word or phrase of the statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *People v Disimone*, 251 Mich App 605, 610; 650 NW2d 436 (2002).

B. Analysis

MCL 769.11b provides:

> Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing.

However, "[w]hen a parolee is arrested for a new criminal offense, he is held on a parole detainer until he is convicted of that offense, and he is not entitled to credit for time served in jail on the sentence for the new offense." *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004); see also MCL 791.238(2). "A parole detainee who is convicted of a new criminal offense is entitled, under MCL 791.238(2), to credit for time served in jail as a parole detainee, but that credit may only be applied to the sentence for which the parole was granted." *Id.* The parolee must serve the remainder of the term on the previous offense before he serves the term for the subsequent offense. *Id.*; see also MCL 768.7a(2). The statutes and caselaw are clear and unambiguous: parolees do not get jail credit for time served for subsequent offenses. Thus, the trial court did not err when it gave defendant no credit for time served prior to sentencing.

X. EFFECTIVE ASSISTANCE OF COUNSEL

Lastly, defendant claims he was denied the effective assistance of counsel by his trial counsel's failure to make the objections he has outlined in his brief on appeal. We disagree.

A. Standard of Review

Where there is no request for an evidentiary hearing or a motion for a new trial, appellate review of defendant's claim of ineffective assistance of counsel is limited to the existing record. *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007).

B. Analysis

The right to counsel is guaranteed by the United States and Michigan Constitutions. US Const, Am VI; Const 1963, art 1, § 20. Where the issue is counsel's performance, a defendant must show that (1) counsel's performance was below an objective standard of reasonableness under professional norms, and (2) there is a reasonable probability that, if not for counsel's errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable. *Strickland v Washington*, 466 US 668, 687-688; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 309, 312-313; 521 NW2d 797 (1994).

Defense counsel is given wide discretion in matters of trial strategy because many calculated risks may be necessary in order to win difficult cases. *Pickens*, *supra*, 446 Mich at 325. There is therefore a strong presumption of effective counsel when it comes to issues of trial strategy. *Id.* at 343. An appellate court will not second-guess matters of strategy or use the benefit of hindsight when assessing counsel's competence. *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999).

Other than a general pronouncement that the objections raised in the brief should have been made and some boilerplate general law on ineffective assistance of counsel, defendant raises no cognizant analysis using the appropriate two prongs of *Strickland* on any specific issue (with the exception of an objection to *Drohan*, for the purposes of preserving it for federal review). One cannot simply announce a position or assert an error and leave it up to the Court to do his research and develop his arguments and then accept or reject his position. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984).

That said, even if we were to treat defendant's claim here to mean that if every item of contention in this appeal that was not preserved by objection at trial was preserved by defense counsel at trial, defendant still would not be entitled to relief on the basis of ineffective assistance of counsel. None of the issues raised on appeal have any merit, whether they were preserved or not. "There is no obligation for a defense attorney to object where such objection would be futile." *Odom*, *supra* at 416. And with respect to the sentencing issues, those issues were preserved by a motion to correct sentence, so any claim of ineffective assistance of counsel for failure to preserve those issues is moot. See MCL 769.34(10); MCR 6.429(C). Thus, defendant was not denied the effective assistance of counsel and so is not entitled to relief on that basis.

Affirmed.

/s/ Donald S. Owens
/s/ Patrick M. Meter
/s/ Bill Schuette