STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 10, 2009
v	No. 280812 Wayne Circuit Court
TYRONE PILLARS, a/k/a TYRONE L. PILLARS, Defendant-Appellant.	LC No. 06-010364-01

Before: Jansen, P.J., and Borrello and Stephens, JJ.

PER CURIAM.

A jury convicted defendant of possession of 50 grams or more but less than 450 grams of cocaine, MCL 333.7403(2)(a)(*iii*), for which he was sentenced as a fourth habitual offender, MCL 769.12, to 20 to 60 years in prison. He appeals as of right and we affirm.

Defendant was driving a Ford Bronco II in August 2006, when he was pulled over by two Detroit police officers for driving with a cracked front windshield. Defendant was seen leaning forward in the car using his hands and legs, in what looked like an attempt to conceal something under the driver's seat. Defendant was directed out of the car and was eventually arrested when it was determined that he had been driving without a license. Incident to the arrest, the car was searched and a bag containing crack cocaine was found under the driver's seat.

Defendant first argues the trial court erred by denying his motion to suppress the cocaine seized from his car. This argument is without merit.

Following the suppression hearing, the trial court rejected defendant's claim that the traffic stop was pretextual for the reason that the particular police officers held a grudge against him that arose out of a case dismissed in 2004. The trial court's factual findings at the suppression hearing were not clearly erroneous. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005); *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). Even assuming arguendo that the officers did hold a grudge against defendant, the traffic stop was lawful because the cracked windshield constituted a traffic violation. *Whren v United States*, 517 US 806, 814-815; 116 S Ct 1769; 135 L Ed 2d 89 (1996); *People v Haney*, 192 Mich App 207, 210; 480 NW2d 322 (1991). Moreover, as the trial court duly noted following the suppression hearing, the officers did not even know that defendant was the individual driving the vehicle until after the traffic stop had been effectuated. In short, defendant was lawfully arrested after it

was determined he had been driving without a license, and the Bronco was properly searched incident to the arrest. *Thornton v United States*, 541 US 615, 620-622; 124 S Ct 2127; 158 L Ed 2d 905 (2004); *People v Bullock*, 440 Mich 15, 26; 485 NW2d 866 (1992); *People v Mungo*, 277 Mich App 577, 581, 587-589; 747 NW2d 875 (2008). Accordingly, the trial court properly denied defendant's motion to suppress.

Defendant next argues that he was denied the effective assistance of counsel. This issue is equally without merit.

The decision whether to admit evidence regarding the dismissed 2004 case involving defendant and the police officers was a matter of trial strategy. *People v Horn*, 279 Mich App 31, 39; 755 NW2d 212 (2008). This Court will not substitute its judgment for that of trial counsel on such matters. *Id*.; *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). Defendant's ineffective assistance of counsel claim must therefore fail. *People v Unger*, 278 Mich App 210, 242-243; 749 NW2d 272 (2008).

Defendant lastly argues that his sentence constitutes cruel and unusual punishment under the United States and Michigan Constitutions, US Const, Am VIII; Const 1963, art 1, § 16, and that his sentence should be vacated because a record was never made regarding the convictions used to support his habitual offender enhancement. We disagree.

Due to his status as a fourth habitual offender, defendant's sentence of 20 to 60 years in prison was within the guidelines. MCL 777.63; MCL 777.21(3)(c); Michigan Sentencing Guidelines Manual (2008 edition), p 90. Accordingly, the sentence is presumptively proportionate to the offense and does not constitute cruel and unusual punishment. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008). Indeed, this Court must affirm a sentence that falls within the appropriate guidelines range absent an error in the scoring of the guidelines or the trial court's reliance on inaccurate information. MCL 769.34(10). With regard to defendant's challenge to his habitual offender enhancement, he was given an opportunity to challenge the validity of the underlying felonies before the trial court. See MCL 769.13(6). Nonetheless, he never did so. Specifically, the record establishes that defendant's attorney read the PSIR to defendant verbatim, that defendant generally agreed with the information in the PSIR, and that defendant's only complaint with the PSIR was that it did not contain information regarding his employment prior to the arrest. Defendant may not challenge for the first time on appeal the validity of the underlying convictions used to support his habitual offender enhancement. MCL 769.34(10); *People v Jones*, 83 Mich App 559, 568; 269 NW2d 224 (1978); *People Mays*, 77 Mich App 389, 390-391; 258 NW2d 87 (1977); *People v Covington*, 70 Mich App 188, 195; 245 NW2d 558 (1976).

Affirmed.

/s/ Kathleen Jansen
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens