

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS WILLIAM PRINGLE,

Defendant-Appellant.

UNPUBLISHED

January 24, 1997

No. 184090

St. Clair Circuit Court

LC No. 93-002880-FH

Before: Doctoroff, P.J., and Hood and Paul J. Sullivan,* JJ.

PER CURIAM.

Following a jury trial, defendant, Thomas William Pringle, was convicted of causing death by operating a vehicle under the influence of intoxicating liquor (OUIL causing death), MCL 257.625(4); MSA 9.2325. Defendant was sentenced to 30 months to 180 months' imprisonment. He now appeals his conviction and sentence as of right. We affirm.

On appeal, defendant first contends that the OUIL causing death statute, MCL 257.625(4); MSA 9.235, is unconstitutional because it does not require a mens rea and does not fit the definition of a strict liability, public welfare crime. The constitutionality of a statute is a question of law which we review de novo on appeal. *People v White*, 212 Mich App 298, 304-305; 536 NW2d 876 (1995).

Subsequent to the parties' filing of their briefs on appeal in this matter, the Michigan Supreme Court in *People v Lardie*, 452 Mich 231; 551 NW2d 656 (1996), issued an opinion addressing and resolving the issue which plaintiff raises on appeal. The *Lardie* Court held that OUIL causing death is not a strict liability crime. *Id.* at 256. The Court found that the Legislature intended that proof of a mens rea be demonstrated by a showing that the driver knowingly consumed an intoxicating liquor or a controlled substance, and acted voluntarily in deciding to drive after such consumption. *Id.* at 256. Therefore, the statute is not violative of the constitution, and defendant's conviction cannot be overturned on this basis.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant also contends that, in determining defendant's sentence, the trial court impermissibly relied on the Michigan sentencing guidelines for manslaughter, thus violating defendant's right to be sentenced on the basis of accurate information. Defendant argues that the crime of manslaughter is entirely distinct from that of OUIL causing death, and thus the trial court erred in relying on the manslaughter guidelines. In order to preserve an issue of sentencing criteria for appellate review, the claim should be presented to the trial court before appeal, by motion to vacate sentence, and should be supported by appropriate affidavits. *In Re Guilty Plea Cases*, 395 Mich 96, 137; 235 NW2d 132 (1975). Defendant failed to follow this procedure and thus did not properly preserve this issue. However, this Court will grant review if failure to consider the issue would result in manifest injustice. *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994). In this case, no manifest injustice would result from our failure to review this issue. The record is clear that the lower court did not rely on the manslaughter sentencing guidelines in determining defendant's sentence, and defendant's sentence fell within the statutory range. Accordingly, reversal is not warranted.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Paul J. Sullivan