

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LEMUEL ROWE,

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 190010

Grand Traverse Circuit

LC No. 94-006705-FH

Before: Michael J. Kelly, P.J., and Smolenski and W.J. Giovan,* JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to breaking and entering a building, MCL 750.110; MSA 28.305, and was sentenced to a term of 80 to 120 months' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court did not err by commenting at sentencing on the facts of this offense as the victims testified to at a previous hearing. Defendant agreed that the trial court could consider that testimony as the factual basis for defendant's plea. For purposes of sentencing, these facts were accurate. The trial court believed that defendant had committed a more serious offense and, therefore, it relied upon the facts to depart from the sentencing guidelines. *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990). On the facts of this case, the trial court did not improperly find that defendant had committed a greater offense. *People v Shavers*, 448 Mich 389, 393-394; 531 NW2d 165 (1995); *People v Grimmett*, 388 Mich 590, 607-608; 202 NW2d 278 (1972), overruled on other grounds in *People v White*, 390 Mich 245, 258; 212 NW2d 222 (1973).

Affirmed.

/s/ Michael J. Kelly

/s/ Michael R. Smolenski

/s/ William J. Giovan

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

