

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD ALLAN SHIMEL,

Defendant-Appellant.

UNPUBLISHED

December 19, 1997

No. 197426

Bay Circuit Court

LC No. 86-001055 FH

87-001406 FH

87-001408 FH

Before: Griffin, P.J., and Markman and Whitbeck, JJ.

PER CURIAM.

In lower court Docket No. 86-001055 FH, defendant pleaded guilty to attempted larceny from a building, MCL 750.360; MSA 28.592, MCL 750.92; MSA 28.287, and third offender status, MCL 769.11; MSA 28.1083. In lower court Docket No. 87-001406 FH, defendant pleaded guilty to delivery of LSD, MCL 333.7401(1) and (2)(b); MSA 14.15(7401)(1) and (2)(b), and third offender status. In lower court Docket No. 87-001408 FH, defendant pleaded guilty to possession of less than fifty grams of cocaine, MCL 333.7403(1) and (2)(iv); MSA 14.15(7403)(1) and (2)(a)(iv), and third offender status. Defendant was sentenced in all three cases to five years' probation, with the first year to be served in the county jail. Defendant subsequently pleaded guilty to violating his terms of probation. Defendant received enhanced sentences of thirty-two to forty-eight months' imprisonment for the attempt conviction, 96 to 168 months' imprisonment for the delivery conviction and sixty to ninety months' imprisonment for the possession conviction. Each sentence reflected enhancement based on defendant's status as a repeat offender. Defendant appeals as of right. We affirm.

Defendant argues that his probation revocation must be set aside and his probationary sentence reinstated because the six-year delay from the issuance of the arrest warrant on the probation violation charges until his arrest was the product of the failure of law enforcement officials to exercise due diligence in the execution of the warrant. We are unable to review the merits of this claim in light of defendant's failure to move to quash the warrant in the trial court and the concomitant failure of defendant to create an evidentiary record or secure a ruling from the trial court. See, e.g., *People v Carroll*, 396 Mich 408, 412; 240 NW2d 722 (1976).

Moreover, this Court may not consider the document appended to defendant's appellate brief, because the appending of this document constitutes an improper expansion of the record. *People v Taylor*, 383 Mich 338, 362; 175 NW2d 715 (1970); *Long v Chelsea Community Hosp*, 219 Mich App 578, 588; 557 NW2d 157 (1996); *Harkins v Dep't of Natural Resources*, 206 Mich App 317, 323; 520 NW2d 653 (1994).

Defendant is not entitled to resentencing. The failure to consider one of the factors identified in *People v Snow*, 386 Mich 586; 194 NW2d 314 (1972), does not destroy the propriety of the sentencing judge's rationale. *People v Girardin*, 165 Mich App 264, 268; 418 NW2d 453 (1987). Moreover, while the trial court did not expressly state that it was considering defendant's rehabilitative potential when fashioning defendant's sentences, the trial court's rationale implicitly indicates that the trial court considered this potential and found it lacking.

Similarly, the failure to consider the sentencing guidelines does not destroy the propriety of defendant's sentences. Because defendant was sentenced as an habitual offender, the trial court was precluded from considering the guidelines and, in fact, would have erred had it done so. *People v Gatewood*, 450 Mich 1025; 546 NW2d 252 (1996); *People v Edgett*, 220 Mich App 686, 692-694; 560 NW2d 360 (1996).

Finally, the trial court did not abuse its sentencing discretion. Defendant's sentences are proportionate to the offense and the offender and reflect the seriousness of the matter. *People v Hansford (After Remand)*, 454 Mich 320, 325-326; 562 NW2d 460 (1997); *Edgett, supra* at 695-696.

Affirmed.

/s/ Richard Allen Griffin

/s/ Stephen J. Markman

/s/ William C. Whitbeck