

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARMANDO JOHNSON SACHEL,

Defendant-Appellant.

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UNPUBLISHED

December 30, 1997

No. 196363

Mecosta Circuit Court

LC No. 95-003642-FC

Before: Hood, P.J., and McDonald and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of armed robbery, MCL 750.529; MSA 28.797, two counts of assault with intent to commit armed robbery, MCL 750.89; MSA 28.284, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to fifteen to thirty years' imprisonment for the armed robbery conviction, fifteen to thirty years' imprisonment for each of the assault with intent to commit armed robbery convictions, and two years' imprisonment for the felony-firearm conviction. Consistent with MCL 750.227b(2); MSA 28.424(2)(2), the trial court ordered that defendant serve his sentence for felony-firearm consecutive to his other sentences, which run concurrent. Defendant now appeals as of right. We affirm.

Defendant was accused of committing several robberies near Ferris State University during the early morning hours of April 8, 1995. Defendant's convictions in this case arose out of the robbery of three men at gunpoint who were seated in their cars in a parking lot.

Defendant first argues his Fifth Amendment privilege against self-incrimination was violated when his testimony from a previous trial involving one of the other April 8 robberies was read into evidence. At the prior trial, defendant waived his right not to testify and admitted under oath he had worn the pants, sweatshirt, tee shirt, and boots that had been admitted into evidence on the night of the robberies.

Defendant's argument is without merit. Defendant is correct that a waiver of the Fifth Amendment privilege in a previous proceeding does not prevent one from asserting it in a later

proceeding. *People v Hunley*, 63 Mich App 97, 100; 234 NW2d 169 (1975). Therefore, it would have been a violation of the Fifth Amendment for the court to compel defendant to testify at trial based on his waiver of the privilege in the earlier trial. *Id.* However, defendant's assertion of the Fifth Amendment privilege at trial does not preclude the admission of his voluntary statements made under oath at the previous trial. *Id.* at 100-101. Accordingly, the trial court did not err when it admitted defendant's testimony from the prior trial.

Next, defendant claims his sentence was unjustly enhanced because the guidelines score was increased when the prosecutor dismissed other pending charges against him. We decline to address this argument because defendant has abandoned it by failing to cite any authority in support of his position. *People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995). In any event, there is no evidence in the record to suggest that the prosecutor abused his power in dismissing the other robbery charges; therefore, this Court cannot second-guess the prosecutor's decision. *People v Barksdale*, 219 Mich App 484, 488; 556 NW2d 521 (1996).

Finally, defendant argues the trial court abused its discretion in scoring Offense Variable 9 as though defendant were the leader in a multiple offender situation. Appellate relief is no longer available for challenges based on a trial court's alleged errors in scoring the guidelines. *People v Mitchell*, 454 Mich 145, 177-178; 560 NW2d 600 (1997); *People v Peerenboom*, 224 Mich App 195, 201; 568 NW2d 153 (1997). The Michigan Supreme Court has recently held that "application of the guidelines states a cognizable claim on appeal only where (1) a factual predicate is wholly unsupported, (2) a factual predicate is materially false, and (3) the sentence is disproportionate." *Mitchell, supra* at 177. Accordingly, we do not review defendant's claim.

Affirmed.

/s/ Harold Hood  
/s/ Gary R. McDonald  
/s/ Helene N. White