

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CRECENCIO GAMEZ, JR.,

Defendant-Appellant.

UNPUBLISHED

January 9, 1998

No. 188280

Bay Circuit Court

LC No. 89-001066 FH

95-001173 FH

95-001174 FH

95-001175 FH

95-001176 FH

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

The instant appeal as of right arises from five lower court criminal actions. In docket no. 89-001066 FH, defendant pleaded guilty to violating the terms of his probationary sentence imposed on an underlying conviction of breaking and entering an unoccupied building with intent to commit larceny, MCL 750.110; MSA 28.350, and was sentenced to 60 to 120 months imprisonment. In docket no. 95-001173 FH, defendant pleaded guilty to larceny in building, MCL 750.360; MSA 28.592, and received an enhanced sentence of forty-eight to seventy-two months imprisonment, reflecting his status as a second offender, MCL 769.10; MSA 28.1082. In docket no. 95-001174 FH, defendant pleaded guilty to larceny by conversion over \$100, MCL 750.362; MSA 28.594, and received an enhanced sentence of fifty-four to ninety months imprisonment, reflecting his status as a second offender, MCL 769.10; MSA 28.1082. In docket no. 95-001175 FH, defendant pleaded guilty to failure to return rental property over \$100, MCL 750.362a; MSA 28.594(1), and received an enhanced sentence of twenty-four to thirty-six months imprisonment, reflecting his status as a second offender, MCL 769.10; MSA 28.1082. Finally, in docket no. 95-001176 FH, defendant pleaded guilty to attempted absconding, MCL 750.92; MSA 28.287, and was sentenced to twelve to twenty-four months imprisonment. We affirm.

We reject defendant's argument that the trial court lacked the authority to sentence defendant as an habitual offender in docket nos. 95-001173 FH, 95-001174 FH, 95-001175 FH. The supplemental informations were filed on May 19, 1995, one day after defendant was arraigned in the circuit court on the underlying charges and, therefore, the supplemental informations were timely filed. *People v Shelton*, 412 Mich 565, 566; 315 NW2d 537 (1982); *People v Johnson*, 197 Mich App 362, 363-364; 494 NW2d 873 (1992). Moreover, the record fails to support defendant's claim that the supplemental informations were filed only to punish defendant for absconding. Finally, the record establishes that defendant received actual notice of the prosecutor's intent to file the supplemental informations within a sufficient amount of time before defendant pleaded guilty to allow defendant to fully and knowingly participate in the plea proceeding as evidenced by the plea agreement worked out by the parties which included a reduction in the habitual offender charge. See e.g., *People v Hays*, 164 Mich App 7, 15; 416 NW2d 358 (1987).

We also reject defendant's proportionality challenge to his sentences. Defendant's sentences do not violate the principle of proportionality in light of defendant's criminal history, defendant's repeated failure to take advantage of the rehabilitative opportunities provided him and the benefits bestowed upon defendant by the plea bargain. *People v Spicer*, 216 Mich App 270, 276; 548 NW2d 245 (1996); *People v Hardy*, 212 Mich App 318, 321; 537 NW2d 267 (1995); *People v Smith*, 195 Mich App 147, 150-151; 489 NW2d 135 (1992).

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly