

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOEY DUANE OLIVER,

Defendant-Appellant.

UNPUBLISHED

January 23, 1998

Nos. 184741;199968

Jackson Circuit Court

LC No. 94-071022-FC

Before: Markey, P.J. and Michael J. Kelly and Whitbeck, JJ.

PER CURIAM.

Defendant appeals by right from his conviction by guilty plea of conspiracy to commit armed robbery, MCL 750.157a; MSA 28.354(1); armed robbery, MCL 750.529; MSA 28.797; and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2). He also pled to being a second felony habitual offender, MCL 769.10; MSA 28.1082. This Court previously granted a motion to remand in connection with sentencing issues.¹ After that remand, the trial court resentenced defendant to two years' imprisonment for felony-firearm, to be followed by concurrent terms of twenty-three to sixty years on the conspiracy conviction and twenty to sixty years on the armed robbery conviction.

In the late morning of December 1, 1994, it was reported that a robbery had taken place at a location of Republic Bank and that the suspects were two black males. Shortly thereafter, police officers stopped a vehicle occupied by four black males including defendant, Casual Unique Banks ("Banks") and the driver Anthony Taylor ("Taylor"). There was undisputed testimony that the vehicle was owned by Taylor. A police officer who performed a "pat down" search of Banks found a large bundle of money in one of his coat pockets, a bank wrapper on one bundle of money and a Michigan identification card for defendant. After defendant was taken to a police station, a police officer found a wad of money in defendant's coat pocket. Defendant thereafter made self-incriminating statements to the police.

Defendant moved to suppress the evidence found in the search of Banks' person and defendant's own person, as well as his self-incriminating statements, as the fruit of an illegal search. He

maintained that the traffic stop was improper because it was without sufficient justification.² The trial court concluded that the traffic stop was supported by reasonable suspicion and, accordingly, denied the motion to suppress. Thereafter, defendant pled guilty to the charged offenses, with the condition that defendant reserved the right to appeal from the trial court's ruling on the suppression motion.

I

A trial court's findings of fact after a suppression hearing will not be disturbed unless they are clearly erroneous. *People v LoCicero*, 453 Mich 496, 500; 556 NW2d 498 (1996). However, the trial court's legal conclusions are subject to de novo review. *People v Medlyn*, 215 Mich App 338, 340; 544 NW2d 759 (1996).

The initial question is whether defendant had standing to challenge the seizure of the evidence found on Banks' person. We agree with the prosecution that defendant had no standing to seek suppression of the evidence found on Banks' person as the product of an illegal search or seizure. The constitutional right to be free of unreasonable searches and seizures is personal, and a defendant must personally have a reasonable expectation of privacy in the subject of a search and seizure to challenge its validity. See *People v Wood*, 447 Mich 80; 523 NW2d 477 (1994); *People v Lombardo*, 216 Mich App 500, 504-505; 549 NW2d 596 (1996). When a passenger in an automobile that is the subject of a traffic stop does not have a property or possessory interest in the vehicle or an interest in any property that is seized, that passenger does not have standing to challenge the search of an area of the vehicle unless that passenger has a reasonable expectation of privacy in the area that was searched. *Rakas v Illinois*, 439 US 128; 130, 148; 99 S Ct 421; 58 L Ed 2d 387 (1978); *People v Armendarez*, 188 Mich App 61, 71; 468 NW2d 893 (1991).

It follows that defendant, who had no property or possessory interest in Taylor's automobile, lacked standing to challenge the search of Banks' person that followed the traffic stop.³ Thus, regardless of the soundness of the trial court's rationale in concluding that the traffic stop was justified by reasonable suspicion, the trial court properly declined to suppress the evidence found on Banks' person from being used against defendant.

However, defendant plainly had standing to challenge the admission of the incriminating evidence found on his *own* person. Nevertheless, once the evidence seized from Banks' person was discovered, it is beyond reasonable dispute that the police had probable cause to arrest defendant. Defendant was in a vehicle with Banks shortly after the robbery. Defendant, Banks and Taylor were close by the location of the bank that had been robbed. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996) (probable cause to arrest exists where facts and circumstances in officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been or is being committed). Defendant was then arrested and taken to the police station. It was only *after* being taken to the police station that defendant was searched and that incriminating evidence, a wad of money, was found on his person. Because there was probable cause to support defendant's arrest, the arrest was lawful. Therefore, the search of defendant's person was justified as a search incident to arrest. *Id.* Similarly, in light of defendant's lawful arrest, there was no reason for suppression of any self-incriminating

statements that he made to the police. In sum, the trial court reached the right result by denying the suppression motion. See *People v Brake*, 208 Mich App 233, 242 n 2; 527 NW2d 56 (1994).

II

Defendant argues that the trial court erred by denying his motion to withdraw his guilty plea. We review a trial court's ruling on a motion to withdraw a guilty plea before sentencing for an abuse of discretion. *People v Spencer*, 192 Mich App 146, 149-150; 480 NW2d 308 (1991). To support withdrawal of a guilty plea before sentencing, a defendant must show that withdrawal of the plea is supported by reasons "based on the interests of justice." *Id.* at 151. In essence, defendant asserts that he was mentally impaired and that he incorrectly believed that he had to plead guilty to preserve his appeal from the evidentiary ruling discussed in the preceding section of this opinion. During the hearing in which defendant entered his guilty plea, the trial court stated that defendant maintained his right to appeal from the decision on the suppression motion *even though* he was entering a guilty plea. The trial court also explained to defendant the nature and consequences of a guilty plea. Thus, it was clear that defendant would have had the right to appeal the decision on the suppression motion had defendant been convicted after a trial. We find that the trial court did not abuse its discretion by denying defendant's motion to withdraw his guilty plea.

III

Defendant argues that his sentences of twenty-three to sixty years for conspiracy to commit armed robbery/habitual second and twenty to sixty years for armed robbery/habitual second were disproportionately severe. Sentences imposed on habitual offenders are reviewed for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). Defendant's arguments in his brief regarding this issue are predicated on comparing defendant's sentences with the recommendation of the sentencing guidelines in this case. However, it is inappropriate for this Court to give any consideration to the sentencing guidelines in reviewing an habitual offender sentence. *People v Gatewood*, 450 Mich 1025; 546 NW2d 252 (1996); *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996).

In any event, we do not consider defendant's sentences to be disproportionate. In its comments preceding the imposition of sentence, the trial court stated that it considered the factors of punishment, rehabilitation, deterrence and the protection of society. Cf. *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972) (basic considerations in sentencing include reformation of offender, protection of society, disciplining wrongdoer and deterrence of others from committing like offenses). The trial court noted the circumstances of the offenses as well as defendant's extensive criminal and juvenile offense record. We conclude that the trial court did not abuse its discretion by imposing the severe sentences at issue inasmuch as defendant's crimes "in the context of his previous felon[y], evidence[] that the defendant has an inability to conform his conduct to the laws of society." *Hansford, supra* at 326.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ William C. Whitbeck

¹ Accordingly, the sentencing issues raised in defendant's initial appeal, Docket No. 184741, are now moot.

² Police officers may make a valid investigatory stop if they possess "reasonable suspicion" that crime is afoot. *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). Although this does not require suspicion rising to the level of probable cause, it entails more than an inchoate or unparticularized suspicion and must have a particularized and objective basis. *Id.* at 98-99.

³ Clearly, defendant lacked any reasonable expectation of privacy in *Banks'* person. We note that another panel of this Court, in considering Banks' appeal from his convictions in connection with the same robbery concluded that the traffic stop was supported by reasonable suspicion. *People v Banks*, unpublished per curiam opinion of the Court of Appeals, issued March 7, 1997 (Docket No. 185855). In light of our disposition of this issue, we need not express an opinion regarding whether the traffic stop was supported by reasonable suspicion.