STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT I. BRADY,

Defendant-Appellant.

UNPUBLISHED
March 27, 1998

No. 193888
Oakland Circuit Court
LC No. 95-140652 FC

Before: Michael J. Kelly, P.J., and Cavanagh and N. J. Lambros*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to rob while armed, MCL 750.89; MSA 28.284, and malicious destruction of property exceeding a value of $100, MCL 750.380; MSA 28.612. Defendant subsequently pleaded guilty to two counts of being an habitual offender, third offense, MCL 769.11; MSA 28.1083. Defendant was sentenced as an habitual offender to concurrent prison terms of twelve and one-half to thirty years for the assault conviction and two to eight years for the malicious destruction of property conviction. He appeals as of right, and we affirm.

Defendant first argues that there was insufficient evidence to score twenty-five points under offense variable 2 in the sentencing guidelines for bodily injury or terrorism. However, appellate relief is not available for claimed errors based on alleged misinterpretation of the sentencing guidelines. *People v Peerenboom*, 224 Mich App 195, 201; 268 NW2d 153 (1997) citing *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997). Furthermore, the sentencing guidelines do not apply to the sentencing of habitual offenders. *People v Hansford (After Remand)*, 454 Mich 320, 323; 562 NW2d 460 (1997).

Next, defendant claims that there was insufficient evidence to support a conviction of assault with intent to rob while armed because there was no completed armed robbery. The elements of assault with intent to rob while armed are 1) an assault with force and violence, 2) an intent to rob or steal, and 3) the defendant's being armed. *People v Smith*, 152 Mich App 756, 761; 394 NW2d 94

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

(1986). Defendant cites *People v Adams*, 128 Mich App 25, 29; 339 NW2d 687 (1983) to support his position that a completed armed robbery is a required element of the crime for which he was convicted. In *Adams*, this Court stated, "Proof of a completed armed robbery will establish an assault with intent to rob while armed." *Id.* This Court did not add an additional element to the crime of assault with intent to rob while armed, but merely reiterated that evidence that the offender completed the robbery is one way of establishing the intent to rob or steal. Although the robbery in this case was not complete because defendant was unable to wrest the victim's purse from her grasp, the essential elements of assault with intent to rob while armed, including the requisite intent, were supported by sufficient evidence.

Defendant also asserts that the jury instructions for attempted armed robbery and assault with intent to rob while armed were identical and that "an irrational verdict resulted" because of the confusion in the instruction. However, defendant failed to preserve his objection to the jury instructions for appellate review. The failure to object to jury instructions in the trial court waives error for purposes of appeal unless relief is necessary to avoid manifest injustice. *People v Perry*, 218 Mich App 520, 530; 554 NW2d 362 (1996) citing *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). Manifest injustice will not occur in this instance because the instructions were not identical and were not erroneous.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Nicholas J. Lambros