STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK D. DENNIS,

Defendant-Appellant.

UNPUBLISHED
September 25, 1998

No. 197825
Wayne Circuit Court
LC No. 95-010930

Before: Smolenski, P.J., and White and Markman, JJ.

PER CURIAM.

Defendant and a co-defendant, Kenneth Irwin Banks, were jointly charged in a multi-count information with kidnapping a child under the age of fourteen, MCL 750.350; MSA 28.582, and extortion, MCL 750.213; MSA 28.410. Defendant was charged individually with two counts of felonious assault, MCL 750.82; MSA 28.277, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). A jury found defendant guilty of two counts of felonious assault and one count of felony firearm. Defendant was sentenced to two years' imprisonment on the felony-firearm conviction, consecutive to two to four years' imprisonment for the felonious assault convictions. Defendant appeals of right. We affirm.

I

Defendant first argues that there was insufficient evidence of felonious assault to allow the jury to consider the charge. Defendant also argues that the jury's verdict was against the great weight of the evidence. We disagree.

The elements of felonious assault are 1) an assault, 2) with a dangerous weapon, and 3) with the intent to injure or to place the victim in fear or apprehension of an immediate battery. *People v Coddington*, 188 Mich App 584, 594; 470 NW2d 478 (1991). The child's mother and an undercover officer, Detective Potts, testified that they drove together to a house at which defendant was sitting on the front porch. The child's mother testified that when the vehicle they were in approached the house, defendant waved a gun above his head while he instructed them "to get the hm on down the street because you ain't getting nothing out of here." The child's mother testified that she felt scared

when defendant waved the gun. Detective Potts testified that after the child's mother had said that she saw the child in the house at which defendant was sitting on the porch, he yelled to defendant to let the child out of the house. Potts testified that defendant then lifted his shirt, pulled out a semi-automatic handgun and held it up, saying "you better get out of here before I fuck you up." Potts testified that he felt fearful for himself and the citizens he had in the car.

Thus, the testimony of the child's mother and of Detective Potts supported that defendant threatened them while brandishing a gun. We conclude that there was sufficient evidence to support defendant's felonious assault convictions. See *Coddington, supra* at 588-589, 594.

We decline to address defendant's argument that the verdict was against the great weight of the evidence because it is unpreserved. Defendant's appellate brief provides no cites to the record, does not discuss any trial testimony, and acknowledges that defendant did not move for a new trial below. Defendant's motion for directed verdict at the close of the prosecution's proofs did not operate to preserve the issue. Defendant waived this claim by failing to move for a new trial below. *People v Hughey*, 186 Mich App 585, 594; 464 NW2d 914 (1990).

II

Defendant's second issue is captioned: "The jury's verdict was compromised; defendant's conviction should be reversed and a new trial ordered." In his argument under this caption, defendant first asserts that he should not have been bound over on the kidnapping and extortion charges, and that the jury compromised its verdict by finding him not guilty of those charges but guilty of both counts of felonious assault. However, defendant provides no cites to the record, does not discuss the evidence presented at the preliminary examination, and does not explain how that evidence was insufficient to support his bindover.

An appellant may not simply announce his position and leave it to this Court to discover and rationalize the basis for his claims, *Sargent v Browning-Ferris Industries*, 167 Mich App 29, 32-33; 421 NW2d 563 (1988); nor may he or she give issues cursory treatment will little or no citation of supporting authority. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984). We therefore decline to further address the claim defendant should not have been bound over on the charges of which he was acquitted.

In arguing that the jury's verdict was the result of compromise that was tainted by the submission of the kidnapping and extortion charges to the jury, defendant relies on *People v Vail*, 393 Mich 460; 227 NW2d 535 (1975), and states "the Michigan Supreme Court indicated that where the trial judge instructs the jury on a higher charge, which is unwarranted by the proofs, reversal is required." Defendant does not straightforwardly challenge the trial court's decision to deny his motion for directed verdict regarding the kidnapping and extortion charges and permit those charges to be considered by the jury. To the extent the challenge is implied, we reject it because defendant provides no support for such a challenge; he does not discuss the evidence presented at trial or explain why it was insufficient to justify submitting the case to the jury. While an insufficiency argument in a criminal case need not be preserved at the trial level, here defendant was acquitted at the trial level, and seeks to

establish that the jury's verdict was tainted by the submission of the kidnapping and extortion charges. Further, defendant's reliance on *Vail, supra,* is misplaced because defendant was charged with multiple charges involving separate and distinct counts, and was acquitted in total of the charges regarding which he asserts there was insufficient evidence. *People v Doyan,* 116 Mich App 356; 323 NW2d 397 (1982).

III

Defendant next argues his sentence was disproportionate. We disagree.

The test for proportionality is not whether the sentence departs from or adheres to the sentencing guidelines range, but whether it reflects the seriousness of the matter. *People v Lemons,* 454 Mich 234, 260; 562 NW2d 447 (1997). At sentencing, the trial court noted that it would exceed the guidelines range of zero to twelve months because defendant's conduct had posed an extraordinary threat to the community. The court noted that the jury found that defendant had possessed a fully loaded nine-millimeter semi-automatic weapon, and had waved it in a threatening manner. The court noted that defendant's conduct involved the risk of life to a great number of people and some interaction between defendant and Banks, who kidnapped the child.

Defendant acknowledges that the trial court placed its reasoning on the record, but argues that the court failed to take into account that he had no criminal history. It is clear from the sentencing hearing transcript that, contrary to defendant's argument, the trial court was aware that defendant had no prior criminal history. We conclude that defendant's sentence reflects the seriousness of the matter and did not constitute an abuse of discretion.

IV

Defendant next argues that the 180-day rule regarding speedy trial was violated and that his conviction must be dismissed. The cases defendant cites pertain to the 180 day rule of MCL 780.131; MSA 28.969(1),[1] which was intended to give an inmate, who has pending offenses not yet tried, an opportunity to have the sentences run concurrently consistent with the principle of law disfavoring accumulations of sentences. *People v Smith,* 438 Mich 715, 718; 475 NW2d 333 (1991) quoting *People v Loney,* 12 Mich App 288, 292; 162 NW2d 832 (1968). The statute applies to an inmate who is incarcerated as a result of a conviction other than the untried information in question. *People v Chambers,* 439 Mich 111, 116; 479 NW2d 346 (1992). The defendant need not object to delay to preserve the issue. *People v Hewitt,* 176 Mich App 680, 682; 439 NW2d 913 (1989). The 180-day rule does not require that trial commence within 180 days, but obligates the prosecution to take good-faith action during the 180-day period and thereafter to proceed to ready the case against the prison inmate for trial. *People v Bell,* 209 Mich App 273, 279; 530 NW2d 167 (1995).

The discussion of this issue in defendant's appellate brief provides no factual analysis to support this argument. His appellate brief's statement of facts makes one pertinent cite to the record, i.e., to the hearing transcript of defendant's motion to quash, where, during discussions regarding setting a trial

date, the prosecution indicated to the court that defendant had been in custody since the day of the preliminary examination in the instant case, September 27, 1995.

The prosecution argues, and we agree, that defendant's brief has not provided the date he became an inmate for purposes of the 180-day rule. It appears from the record that the pertinent date is January 11, 1996, when defendant was sentenced on an unrelated charge of carrying a concealed weapon. As trial in the instant case began on April 29, 1996, well within 180 days of January 11, 1996, defendant's claim fails.

We further note that if defendant's argument is regarding the six-month rule of MCR 6.004(C), the issue is moot, as the remedy for a violation of that rule is release on personal recognizance.

V

Defendant's last argument is that his preliminary examination was held more than fourteen days after arraignment.[2] Without citing to the record or providing any factual analysis, defendant merely states that "the record does not indicate a showing of good cause. If anything, it demonstrates a showing of prejudice" toward defendant.

Defendant objected at the preliminary examination to the examination being scheduled beyond the fourteen day period. However, because defendant did not take an interlocutory appeal regarding this issue, it is not preserved for appellate review. *People v Crawford*, 429 Mich 151, 157; 414 NW2d 360 (1987).

Affirmed.

/s/ Michael R. Smolenski
/s/ Helene N. White
/s/ Stephen J. Markman

[1] MCL 780.131; MSA 28.969(1) provides in pertinent part:

> Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint.

[2] The trial court's docketing statement indicates that defendant was arraigned on August 7, 1995, and the preliminary examination held on September 27, 1995.