

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER S. JACKSON,

Defendant-Appellant.

UNPUBLISHED

December 15, 1998

No. 204714

Recorder's Court

LC No. 96-503423

Before: Doctoroff, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to prison terms of thirty-five to sixty years for the armed robbery conviction and seven to ten years for the assault conviction, to be served consecutive to a two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first contends that he was prejudiced by the prosecution's failure to produce for trial three endorsed witnesses. We disagree. Once a guilty verdict is entered, the only relevant inquiry is whether the prosecution's failure to produce a witness prejudiced a defendant. *People v Jackson*, 178 Mich App 62, 66; 443 NW2d 423 (1989). However, defendant failed to preserve the issue of prejudice for appellate review by moving for a new trial in the trial court on this basis. *Jackson, supra*. Hence, we decline to review this issue.

Defendant also summarily states that the trial court should have instructed the jury with CJI2d 5.12 with respect to two of the endorsed witnesses that were not produced at trial. This issue is waived because defendant failed to cite any authority or present any argument in support of his position. *People v Weathersby*, 204 Mich App 98, 113; 514 NW2d 493 (1994).

Last, defendant asserts that the thirty-five to sixty year sentence for the armed robbery conviction is disproportionate because the departure from the guidelines was based upon the seriousness of the injury suffered by the victim, which is a factor already taken into account in scoring

the guidelines. We disagree. Factors considered in the guidelines may support a departure. *People v Davis*, 181 Mich App 354, 358; 448 NW2d 842 (1989). Therefore, the trial court did not err by weighing the seriousness of the victim's injury more heavily than did the guidelines. Further, in departing from the guidelines, the trial court also considered defendant's contact with the juvenile system, see *People v Spicer*, 216 Mich App 270, 276; 548 NW2d 245 (1996), as well as the fact that the court believed the evidence established defendant's guilt of the greater offense of assault with intent to murder. See *People v Harris*, 190 Mich App 652, 663; 476 NW2d 767 (1991). Considering the seriousness of the circumstances surrounding the offense and the offender, the sentence is proportionate to the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

Affirmed.

/s/ Martin M. Doctoroff

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald