

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM DANIEL BURNS,

Defendant-Appellant.

UNPUBLISHED

December 26, 2000

No. 217658

Lenawee Circuit Court

LC No. 98-007881-FH

Before: McDonald, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of conspiracy to burn real property, MCL 750.157a; MSA 28.354(1), and burning real property, MCL 750.73; MSA 28.268. He was sentenced as an habitual offender, fifth offense, MCL 769.12; MSA 20.1084, to two concurrent life terms. Defendant appeals as of right. We affirm.

Defendant first argues that the court erred by holding that the six-year statute of limitations in MCL 767.24; MSA 28.964 for filing an indictment was tolled for the period of time that defendant was incarcerated in Ohio between the date of the offense and the date he was eventually charged with the crimes for which he was convicted. We disagree. Under the plain and unambiguous language of the statute, “. . . any period during which the party charged did not usually and publicly reside within this state shall not be considered part of the time within which the respective indictments shall be found and filed.” MCL 767.24(1); MSA 28.964(1). Because defendant did not reside in Michigan during the time of his incarceration, the statute was tolled for this time period.

Further, because defendant conceded that he resided in Ohio for more than one year during the time period between the offense and the date he was charged, and because he admitted that there was no question of fact regarding his incarceration in Ohio, the trial court properly refused to submit the issue to the jury. Cf. *People v Price*, 74 Mich 37, 43-44; 41 NW 853 (1889) (factual question existed and, therefore, submission of the statute of limitations question to the jury was proper).

Defendant next argues that the court abused its discretion by foreclosing the possibility that the jury could rehear testimony. Even if the trial court impermissibly foreclosed the possibility of having the testimony reviewed at a later time under MCR 6.414(H), defense

counsel acquiesced in the trial court's handling of the matter and thereby expressed satisfaction with the trial court's refusal of the jury's request. Defendant cannot harbor error as an appellate parachute by waiving objection to an issue before a trial court and then raising it as an error on appeal. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000).

Defendant also argues that the court abused its discretion by sentencing defendant to two concurrent life terms. We disagree.

Provided permissible factors are considered, appellate review is limited to whether the sentencing court abused its discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). A sentence must be proportionate to the seriousness of the crime and the defendant's prior record. *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990); *People v Bennett*, 241 Mich App 511, 515; 616 NW2d 703 (2000). Our review of the record indicates that the court made a thorough analysis of the appropriate factors and did not abuse its discretion in sentencing defendant.

Finally, defendant argues that plaintiff violated several discovery orders, and that the proper remedy for such violations was for the court to dismiss the charges against defendant. This Court reviews a trial court's decision regarding discovery orders for an abuse of discretion. *People v Davie*, 225 Mich App 592, 298-299; 571 NW2d 229 (1997).

Our review of the record fails to reveal how any of these alleged discovery violations compromised defense counsel's ability to cross-examine any of the witnesses or how they resulted in any actual prejudice to defendant. More importantly, the court offered to adjourn trial for a short time period in order to address any of the defense's discovery concerns and defendant expressly declined this remedy, thereby waiving review of any alleged discovery violations on appeal. See *Carter*, *supra* at 214.

Affirmed.

/s/ Gary R. McDonald
/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald