STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY ALLEN PARMENTIER,

Defendant-Appellant.

UNPUBLISHED
February 16, 2001

No. 218899
Macomb Circuit Court
LC No. 98-002132-FH

Before: Bandstra, C.J., and Griffin and Collins, JJ.

PER CURIAM.

Defendant was convicted by a jury of attempted second-degree home-invasion, MCL 750.92; MSA 28.287 and MCL 750.110a(3); MSA 28.305(a), and resisting and obstructing an officer, MCL 750.479; MSA 28.747. He was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to concurrent prison terms of six to twenty years for the attempted home invasion conviction and one to two years for the resisting and obstructing conviction. He appeals as of right. We affirm.

Defendant argues that there was insufficient evidence of an intent to commit larceny to support his conviction for second-degree home invasion. Viewed most favorably to the prosecution, *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992), the evidence indicated that defendant broke a glass door at the back of the victims' home and was apprehended shortly thereafter by the police, who responded after a security alarm was triggered. As defendant correctly observes, a presumption of an intent to steal may not arise solely from proof of a breaking and entering. However, minimal circumstantial evidence reasonably leading to the conclusion that defendant entertained the requisite intent is sufficient. *People v Frost*, 148 Mich App 773, 776-777; 384 NW2d 790 (1985); *People v Palmer*, 42 Mich App 549, 552; 202 NW2d 536 (1972). At the time defendant was apprehended, a flashlight and extra batteries were found in his pockets, and a mismatched pair of cotton gloves were found hidden in his underwear. Viewed most favorably to the prosecution, this evidence was sufficient to enable a rational trier or fact to conclude beyond a reasonable doubt that defendant broke into the home for the purpose of searching for something to steal without being detected or leaving fingerprints. *Wolfe supra*.

Defendant also contends that the trial court improperly considered the possibility of his early release when determining his sentences. Defendant's argument is predicated upon a remark wherein the sentencing judge noted that "my experience has been you usually don't serve the full minimum anyways [sic] if you behave properly while you're in." Although we agree that a sentencing court may not consider possible early release due to disciplinary credits when fashioning a sentence, *People v Fleming*, 428 Mich 408, 425; 410 NW2d 266 (1987), when the court's statement is viewed in context, we are not persuaded that the court improperly considered the possibility of defendant's early release as a basis for fashioning defendant's sentence. Rather, the court had already announced its sentence and was responding to defendant's comment that he would be nearly fifty years old if he was incarcerated for the entire six-year minimum term.

Defendant also claims that the court's statement that he would be eligible for release before the completion of his minimum term is erroneous in light of MCL 769.12(4); MSA 28.1084(4) and, therefore, he is entitled to resentencing. However, having determined that the possibility of defendant's early release was not a factor in the court's sentencing decision, the court's understanding whether defendant would be eligible for early release, even if erroneous, does not warrant relief.

Affirmed.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ Jeffrey G. Collins