

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN R. WALKER,

Defendant-Appellant.

UNPUBLISHED

March 9, 2001

No. 208777

Wayne Circuit Court

Criminal Division

LC No. 96-501393

Before: Kelly, P.J., and White and Wilder, JJ.

KELLY, P.J. (*concurring in part and dissenting in part*).

Defendant claims error in sentencing consecutively for the manslaughter conviction and I agree. The jury did not return two felony-firearm convictions, it returned only one. Conceivably, the jury could have based the verdict on each of the three stated felonies: second-degree murder, involuntary manslaughter and discharging a firearm, inasmuch as the jury was instructed that defendant must have knowingly carried or possessed a firearm “at the time [he] committed one of those three crimes, or all of those three crimes.”

Nevertheless, when more than one felony is committed in a single transaction, more than one conviction for felony-firearm is permitted. *People v Morton*, 423 Mich 650, 656; 377 NW2d 798 (1985); *People v Syakovich*, 182 Mich App 85, 88; 452 NW2d 211 (1989). The proper question is whether the defendant possessed a firearm at the time he committed each felony. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 265 (2000).

In his appellate brief, defendant states the claim as follows:

Because the trial judge instructed the jury it could convict Mr. Walker of felony-firearm if it found he possessed a firearm when he committed either intentional discharge of a firearm or involuntary manslaughter, the trial judge did not have the statutory authority to make the felony-firearm sentence consecutive to the sentence imposed for the voluntary manslaughter conviction . . .

Perhaps it would be clearer to add to the stated claim the words: In addition to being consecutive to the sentence imposed for the discharge of firearm. In any event, I agree with defendant that it was error.

The Judge clearly connected the firearm discharge to the felony-firearm conviction. It was one of defendant's contentions at trial that the victim, a disturbed person, put the gun to his own head while it was in his own possession and pulled the trigger. The evidence that defendant possessed a firearm during the commission of the discharge of a firearm crime was overwhelming. I presume that the jury appropriately based its verdict on the fact that the defendant possessed a firearm during the commission of the discharging of a firearm crime. Since the defendant's own attorney at trial expressed satisfaction with the jury instructions and the appellate attorney for the defendant has expressly stated in his reply brief that he is not seeking reversal of the felony-firearm conviction, the only relief to be fashioned is to order the voluntary manslaughter conviction to run concurrently with both other convictions; both the felony-firearm conviction and the sentence imposed for the intentional discharge conviction. The prosecutor urges that the only relief we should grant is a remand for a new trial on the applicability of the felony-firearm conviction to the voluntary manslaughter conviction. Since the prosecutor has sought no relief either in the trial court or in this Court by way of a cross-appeal, I do not believe that claim is preserved for appellate review.

On all other issues raised in this appeal, I agree with the majority. I do not think remand is necessary. I would affirm.

/s/ Michael J. Kelly