

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MALCOLM P. COLEMAN,

Defendant-Appellant.

UNPUBLISHED

November 21, 2006

No. 261844

Oakland Circuit Court

LC No. 2004-195185-FC

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant was convicted of one count of armed robbery, MCL 750.529, and one count of first-degree home invasion, MCL 750.110a(2), after a jury trial. Defendant was sentenced as a habitual offender, third offense, MCL 769.11, to serve concurrent prison terms of 25 to 50 years for the armed robbery conviction and 20 to 40 years for the first-degree home invasion conviction. Those sentences were to be served consecutively to his parole violation. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Defendant and codefendant, Randy Stradley, without being invited, entered into the home of Sam and Minnie Berman. They taped the couples' feet and hands and took from the home jewelry and \$5,600 in cash.

Prior to charging the jury, the trial court discussed the jury instructions that were to be read. When the trial court asked if the proposed instructions were correct, defense counsel replied, "Sounds fine." After the instructions were given, the trial court asked the attorneys whether they were satisfied with the instructions. Defense counsel replied, "Yes, Your Honor."

II. STANDARD OF REVIEW

Defense counsel consented to the jury instructions given by the court, thereby waiving this issue. This Court need not review issues that have been waived.

III. ANALYSIS

Defendant argues that his constitutional right to a jury trial was violated because the trial court improperly instructed the jury. Defendant raises two separate issues involving the instructions. However, these issues have been waived because defense counsel expressed satisfaction with the instructions given by the trial court. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). A criminal defendant may forfeit a right by failing to timely assert it, but a forfeited right may still be reviewed for plain error, while the intentional relinquishment of a known right constitutes a waiver, which extinguishes the error. *Id.* at 215-216.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette