

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NICHOLAS ANTHONY CHAPMAN,

Defendant-Appellant.

UNPUBLISHED

November 18, 2010

No. 291568

Oakland Circuit Court

LC Nos. 2004-196979-FH;
2005-203195-FH

Before: O'CONNELL, P.J., and BANDSTRA and MURRAY, JJ.

MEMORADUM.

Following a remand from our Supreme Court, defendant appeals his sentences for two convictions of breaking and entering a building with intent to commit a felony or larceny, MCL 750.110. We affirm, because we find defendant has waived the sentencing issue on appeal by failing to comply with the transcript requirement of MCR 7.210(B). This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's breaking and entering convictions arose from offenses that occurred in 2004 and 2005. The trial court initially sentenced defendant to probation as a fourth habitual offender, MCL 769.12. In 2008, defendant violated the terms of his probation. He pleaded guilty to the probation violations, and on September 15, 2008, the trial court revoked his probation and sentenced him to concurrent terms of three to forty years imprisonment for each offense. In March 2009, defendant filed a motion for withdrawal of his plea and resentencing. Defendant argued in the motion that the trial court erred by assessing ten points under Offense Variable (OV) 13, MCL 777.43. The trial court issued an order denying defendant's motion. The order stated, "It is ordered that the Motion to Withdraw Plea or for Resentencing is denied for the reasons stated on the record."

MCR 7.210(B) requires appellants to secure the filing of the transcripts relevant to the issues on appeal. If the trial court's order appointing appellate counsel did not include an order for the relevant transcript, appellate counsel should have requested an order directing the court reporter to prepare the transcript, in keeping with MCR 6.425(G). Here, the record before this Court contains nothing to allow the Court to review the trial court's reasons for denying defendant's motion for resentencing. Absent some information revealing the trial court's reasoning, either in a transcript or in a settled statement, the Court is unable to review the trial court's decision. The failure to file the relevant transcript constitutes a waiver of the sentencing issue. *People v Anderson*, 209 Mich App 527, 535; 531 NW2d 780 (1995).

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Christopher M. Murray