

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 177976

LC No. 94-049930

EDWARD WHITE, JR.,

Defendant-Appellant.

Before: Murphy, P.J., and Griffin and E.R. Post,* JJ.

MURPHY, P.J. (concurring in part and dissenting in part).

I respectfully dissent. Defendant was represented by counsel at trial, no objection was raised, and I would find no manifest injustice by declining to review the issue.

Further, defendant had been disruptive, disrespectful to the court, and duly cautioned by the court prior to the outburst referenced by the majority as its basis for reversal. The timing of the outburst, occurring immediate prior to the instruction by the court, was brought on by the defendant's interruption of the prosecutor's closing argument. The court unsuccessfully attempted to verbally persuade defendant to cease his disruptive behavior prior to making what I would concede to be an intemperate statement by the judge. Nevertheless, defendant was not a novice to the criminal justice system, as evidenced by the fact that he ultimately plead guilty to being a fourth offense habitual offender. Defendant's own outburst and disruptive behavior precipitated a confrontation. See *People v Staffney*, 187 Mich App 660; 468 NW2d 238 (1991); *People v Siler*, 171 Mich App 246; 429 NW2d 865 (1988). I would not encourage or reward this behavior with a reversal on an unpreserved issue.

I agree with the majority in the balance of its opinion and I would also conclude that the sentence imposed as a fourth offense habitual offender did not violate the principle of proportionality. I would affirm.

* Circuit judge, sitting on the Court of Appeals by assignment.

/s/ William B. Murphy