

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MIKEAL LEE WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

May 21, 1996

No. 182260

LC No. 94-006559-FC

Before: Sawyer, P.J., and Griffin and M.G. Harrison,* JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions for armed robbery, MCL 750.529; MSA 28.797, and conspiracy to commit armed robbery, MCL 750.157a; MSA 28.354(1); MCL 750.529; MSA 28.797. Defendant was sentenced to concurrent prison terms of four to twenty years on each conviction. We affirm.

Defendant first argues that he was deprived of a fair trial when the trial court improperly informed the jury about the possible penalty defendant could receive if the jury convicted defendant of the armed robbery offense. As a general rule the jury should not be informed of the possible punishment a defendant could receive if convicted. *People v Mumford*, 183 Mich App 149, 151; 455 NW2d 51 (1990). However, a defendant may not cause error and subsequently seek redress in this Court. *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995). Furthermore, the failure to object to jury instructions serves as a waiver of any error. *People v Pollick*, 448 Mich 376, 387-388; 531 NW2d 159 (1995). Here, defense counsel in his closing statement informed the jury that defendant could receive fifteen years of imprisonment if convicted. The prosecutor objected and proposed that a curative instruction be issued to the jury. With no objection from defense counsel, the trial court informed the jurors that while defendant's possible penalty was of no concern to them in reaching their decision, defendant could receive prison time from zero to life if convicted. Therefore, because defendant created the alleged error and failed to object to the issued curative jury instruction, we decline to address this issue. *Pollick, supra* at 387-388; *Barclay, supra* at 673.

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

Defendant also contends that the court erred when it incorrectly informed the jury that armed robbery was a probational offense. Defendant failed to raise this issue below; therefore, it is waived. *Pollick, supra* at 387-388. We also note that the record does not support defendant's contention that the trial court informed the jury that armed robbery was a probational offense.

Defendant next argues that he was deprived of a fair trial when the trial court precluded defendant from commenting on a piece of evidence he intended to produce at trial. A trial court has the discretion to determine what constitutes a fair and proper opening statement; thus, we review such decisions under the abuse of discretion standard. *People v Buck*, 197 Mich App 404, 413; 496 NW2d 321 (1992). Given that the admissibility of the evidence was in question, we find that the trial court did not err in precluding defendant from discussing it in his opening statement. *Id.*

Defendant's final contention of error is that the trial court erred in informing the jury that a witness had invoked his Fifth Amendment right not to incriminate himself and was therefore unavailable to testify. We decline to address this issue because the record shows that defendant repeatedly requested the course of action about which he complains on appeal. *Barclay, supra* at 673.

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Griffin

/s/ Michael G. Harrison