STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE EARL JAMES,

Defendant-Appellant.

UNPUBLISHED
May 24, 1996

Nos. 179086; 181062
LC Nos. 93-036040-FH;
94-037225-FH

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

In lower court no. 93-036040-FH, defendant pleaded guilty to attempted obtaining money by false pretenses over $100, MCL 750.218; MSA 28.415 and MCL 750.92; MSA 28.287, and was sentenced to three to five years' imprisonment. In lower court no. 94-037225-FH, defendant pleaded nolo contendere to obtaining money by false pretenses over $100, MCL 750.218; MSA 28.415, and pleaded guilty to habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to seven to fifteen years' imprisonment, to be served consecutive to his sentence in the first case. Defendant filed separate appeals as of right, which were consolidated for our review. We affirm. These cases have been decided without oral argument pursuant to MCR 7.214(A) and (E)(1)(b).

The trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea in lower court no. 93-036040-FH due to an allegedly insufficient factual basis to support the plea. *People v Delrita Jones*, 190 Mich App 509, 511-512; 476 NW2d 646 (1991). The facts at the plea hearing established that defendant obtained cash from a bank as a result of writing and presenting a check written on an account with insufficient funds. Defendant was therefore properly charged with the

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*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

crime of obtaining money by false pretenses rather than presentation of an insufficient funds check. *People v Peach*, 174 Mich App 419, 423-428; 437 NW2d 9 (1989).

The trial court did not abuse its discretion in scoring the sentencing guidelines in lower court no. 93-036040-FH. *People v Daniels*, 192 Mich App 658, 674; 482 NW2d 176 (1992). While the trial court should have conducted a hearing on defendant's challenge to three of his prior convictions that he claimed were obtained without the benefit of counsel when the records for those cases were no longer in existence, *People v Love (After Remand)*, 214 Mich App 296; ___ NW2d ___ (1995), any error was harmless. Defendant had three other convictions in which he was represented by counsel that the trial court could have relied upon to score the guidelines for Prior Record Variable 2. Because defendant's argument is limited to the scoring of PRV 2, we decline to remand this matter to the trial court for additional proceedings.

The trial court also properly scored defendant's federal conviction as a felony given his admission that he was sentenced to over one year on that conviction. Based upon the instructions to the sentencing guidelines, that conviction constituted a felony. Michigan Sentencing Guidelines, Second Edition (1988), p 8.

The trial court also properly counted defendant's Indiana offenses as convictions. Defendant failed to produce any evidence to establish that he was sentenced to probation in that matter without a conviction or an adjudication of guilt. Because the facts in the presentence investigation report established that defendant was convicted in that matter, the trial court properly relied on those offenses in the scoring of the guidelines. Cf., *People v Hannan (After Remand)*, 200 Mich App 123, 126-127; 504 NW2d 189 (1993).

In lower court no. 94-037225-FH, the trial court did not err when it sentenced defendant as an habitual offender. While the trial court had the discretion to set both the minimum and the maximum sentence when sentencing defendant as an habitual offender, nothing in the lower court record establishes that the trial court was unaware of its discretion to decide the maximum sentence, as well as the minimum sentence. *People v Beneson*, 192 Mich App 469, 471; 481 NW2d 799 (1992). Cf., *People v Mauch*, 23 Mich App 723, 730-731; 179 NW2d 184 (1970). The trial court's imposition of the statutory maximum sentence does not alone show that the court was unaware of its discretion to determine the maximum sentence. *People v Gomer*, 206 Mich App 55, 59; 520 NW2d 360 (1994). Because the trial court referred to the maximum "possible" sentence at the plea hearing, we conclude that the trial court was aware of its discretion to set the maximum term. *People v Farah*, 214 Mich App 156; 542 NW2d 321 (1995), lv pending.

Affirmed.

/s/ Thomas G. Kavanagh
/s/ Robert B. Burns
/s/ Glenn S. Allen, Jr.