

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEAN MICHAEL FRAKES,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 180209

LC No. 94-001171-FH

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

MEMORANDUM.

Pursuant to an agreement, defendant pleaded guilty to armed robbery, MCL 750.529; MSA 28.797, breaking and entering an occupied dwelling with intent to commit larceny, MCL 750.110; MSA 28.305, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and habitual offender, second offense, MCL 769.10; MSA 28.1082. Defendant was sentenced to enhanced concurrent terms of thirteen to seventy-five years' imprisonment for the robbery conviction and seven-and-a-half to twenty-two-and-a-half years' imprisonment for the breaking and entering conviction, plus two years' consecutive imprisonment for the felony-firearm conviction. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court properly scored Offense Variables 5 and 7, and did not rely on defendant's alleged unconstitutional misdemeanor conviction in imposing sentence. *People v Piotrowski*, 211 Mich App 527, 529-531; 536 NW2d 293 (1995); *People v Haywood*, 209 Mich App 217, 232; 530 NW2d 497 (1995); *People v Johnson*, 202 Mich App 281, 289; 508 NW2d 509 (1993). Thus, defendant is not entitled to resentencing.

*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.

Affirmed.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.