

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE HOWARD,

Defendant-Appellant.

UNPUBLISHED

July 16, 1996

No. 175615

LC No. 93-002433

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY BATTLE,

Defendant-Appellant.

No. 176794

LC No. 93-002433

Before: Wahls, P.J., and Murphy and C.D. Corwin,* JJ.

PER CURIAM.

Following a jury trial, defendants were convicted of eleven counts of armed robbery, MCL 750.529; MSA 28.797.¹ After being convicted on the underlying charges, defendant Battle pleaded guilty to habitual offender, third offense, MCL 769.11; MSA 28.1083. Defendant Howard was sentenced to concurrent life terms for his robbery convictions. Defendant Battle was sentenced to concurrent twenty-five-to-fifty-year terms for his robbery convictions. However, these sentences were vacated, and he was sentenced to life imprisonment for third-felony offender. Defendants now appeal as of right. Defendants' respective appeals have been consolidated on appeal. We affirm defendants'

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

convictions but remand in Docket No. 176794 for the trial court to explain its reasons for imposing a life sentence.

Defendant Howard first contends that the trial court erred in failing to suppress his inculpatory statement. Upon review of the evidence adduced at the *Walker*² hearing and giving deference to the trial court's findings regarding witness credibility, we conclude that the trial court did not err in determining that the statement was voluntarily made and denying defendant Howard's motion to suppress. *People v Lumley*, 154 Mich App 618, 624; 398 NW2d 474 (1986).

Defendant Howard next argues that his statement should have been suppressed as the byproduct of an illegal search. Recognizing that this argument was not presented in the trial court, he also contends that he was denied effective assistance of counsel by trial counsel's failure to move to suppress the statement on this ground. Since defendant Howard did not preserve this issue by moving for a new trial or an evidentiary hearing, review is foreclosed unless the deficiency is apparent on the record. *People v Juarez*, 158 Mich App 66, 73; 404 NW2d 222 (1987). Upon review of the record, we detect no error. Defendant Howard was arrested during the execution of an apparently valid search warrant issued on the basis of information supplied by his accomplice, Joseph Rosenthal. *People v Dowdy*, 211 Mich App 562, 567; 536 NW2d 794 (1995). Because defendant Howard never raised this issue in the trial court and now, other than a conclusory allegation, does not now elaborate on the basis for his challenge to the search warrant, we decline to remand for an evidentiary hearing on this issue. *People v Hurst*, 205 Mich App 634, 641-642; 517 NW2d 858 (1994).

Defendant Howard's final argument is that the trial court abused its discretion in sentencing him to a term that violates the principle of proportionality. Although the trial court thought that it was departing from the guidelines when it imposed concurrent life terms, a life term is actually within the D-IV guidelines for the offense of armed robbery, Michigan Sentencing Guidelines, p 102 (2 ed. 1988), and therefore, the sentence is presumptively proportionate. *People v Williams (After Remand)*, 198 Mich App 537, 543; 499 NW2d 404 (1993). Upon review of the present offense and defendant Howard's prior criminal record, we conclude that he has not overcome this presumption and that the trial court did not abuse its discretion in imposing concurrent life terms. *People v Milbourn*, 435 Mich 630, 667; 461 NW2d 1 (1990).

Defendant Battle argues that he was denied effective assistance of counsel by trial counsel's failure to move to suppress his inculpatory statement and failure to proffer evidence relating to his medical condition. Upon review of the testimony presented at the *Ginther*³ hearing, we find that defendant Battle has failed to establish that trial counsel's representation fell below an objective standard of reasonableness. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). We are persuaded by trial counsel's testimony that she withdrew the motion to suppress the statement because defendant Battle informed her that his allegations of coercive conduct related to another criminal matter. Additionally, we find no error in trial counsel's failure to proffer evidence relating to defendant Battle's medical condition because the existence of the medical records has not been established. *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995).

Defendant Battle next argues that he is entitled to a new trial because the prosecutor questioned him regarding his religious beliefs in violation of MCL 600.1436; MSA 27A.1436. Upon review of the questions asked during the prosecutor's cross-examination of defendant Battle regarding the truthfulness of his statements to police, we find that they did not focus on his opinions about religion, but rather on whether his statements were true. As such, the questioning did not violate the statute. *People v Calloway (On Remand)*, 180 Mich App 295, 297-298; 446 NW2d 870 (1989).

Defendant Battle's final argument on appeal is that the trial court abused its discretion in sentencing him to a term that violates the principle of proportionality. Since the trial court failed to expound upon the reasons for imposing the sentence, we remand this matter for the trial court to provide this explanation. *People v Triplett*, 432 Mich 568, 573; 442 NW2d 622 (1989).

Defendants' convictions are affirmed. Defendant Howard's sentences are affirmed. Docket No. 176794 is remanded for proceedings consistent with this opinion. We retain jurisdiction.

/s/ Myron H. Wahls
/s/ William B. Murphy
/s/ Charles D. Corwin

¹ While defendant Battle's judgment of sentence indicates that he was convicted of two counts of armed robbery, the record reflects that he was actually convicted of eleven counts. On remand, the trial court shall enter an amended judgment that accurately reflects defendant Battle's convictions.

² *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

³ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).