

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LUMUMBA EARLE,

Defendant-Appellant.

UNPUBLISHED

September 13, 1996

No. 145550

LC No. 91005239

Before: Cavanagh, P.J., and Marilyn Kelly and J.R. Johnson,* JJ.

PER CURIAM.

Defendant appeals as of right following his conviction for possession of a short barreled shotgun. MCL 750.224b; MSA 28.421(2). The trial judge sentenced him to three to five years' imprisonment. Defendant argues that his sentence was disproportionate and that his conviction was against the great weight of the evidence. We affirm.

Defendant asserts that his sentence violates the principle of proportionality established in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). However, because he has already served his minimum sentence, the issue is moot. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Next, we find that defendant's sentence was not against the great weight of the evidence. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993). Officer McLeod testified that he saw defendant shove a gun under the seat of a car. He retrieved the gun and arrested defendant. Even though defense witnesses testified that they did not see defendant with a gun and did not see officer McLeod retrieve one from the car, it was for the trier of fact to weigh the witness' credibility. *People v Jackson*, 178 Mich App 62, 65; 443 NW2d 423 (1989). Defendant's conviction was not against the great weight of the evidence.

Affirmed.

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

/s/ Mark J. Cavanagh

/s/ Marilyn Kelly

/s/ J. Richardson Johnson