

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LADONALD LEE,

Defendant-Appellant.

UNPUBLISHED

September 20, 1996

No. 174904

LC No. 93-014478

Before: Cavanagh, P.J., and Murphy and C.W. Simon, Jr.,*JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for larceny from a person, MCL 750.357; MSA 28.589, and entering without breaking with the intent to commit larceny, MCL 750.111; MSA 28.306. Defendant was sentenced to concurrent terms of one and one-half to ten years' imprisonment for the larceny from a person conviction, and one and one-half to five years' imprisonment for the entering without breaking conviction. We affirm.

Defendant argues that there was insufficient evidence presented at trial to support his conviction for larceny from a person. Defendant claims that because the complainant's property was not within her immediate control, defendant should have been convicted of larceny from a building, MCL 750.360; MSA 28.592, which carries a lessor maximum term. We disagree.

The term "from a person," as used within this crime, has been found to mean that the property must have been taken from the body of the complainant or from within his immediate area of control or immediate presence. *People v Wallace*, 173 Mich App 420, 426; 434 NW2d 422 (1988). An item is within a person's immediate presence when it is so "within his reach, inspection, observation or control, that he could . . . retain possession of it." *People v Beebe*, 70 Mich App 154, 159; 245 NW2d 547 (1976) (quoting *Commonwealth v Homer*, 235 Mass 526, 533 (1920)).

Because the complainant testified that she observed defendant grab her purse from inside the booth where she was standing, we find that defendant took the purse from within the complainant's immediate presence. *Wallace, supra*, p 426; *Beebe, supra*, p 159. Therefore, in viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found

that the prosecution presented sufficient evidence to convict defendant beyond a reasonable doubt. See *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

Next, defendant argues that, because prior record variable (PRV) 1 of his sentencing information report was erroneously given a twenty-five point score, we should remand for resentencing. Because defendant failed to challenge this guideline score below, either with an objection or timely motion, appellate review is precluded. *People v Walker*, 428 Mich 261, 266; 407 NW2d 367 (1987).

Finally, defendant argues that he was denied the effective assistance of counsel because his attorney failed to review his presentence investigation report with him. Defendant contends that the report contains certain inaccuracies which, if corrected, would have changed the outcome of his sentence. Therefore, defendant concludes that his attorney's failure to review the presentence report with him, in order to correct these inadequacies, amounted ineffective assistance of counsel. We disagree.

Because defendant failed to move for an evidentiary hearing or new trial below, we will only review this issue to the extent that the claimed mistakes are apparent on the record. *People v Johnson*, 144 Mich App 125, 129-130; 373 NW2d 263 (1985). To establish a claim of ineffective assistance of counsel, the defendant must show that counsel's performance was deficient falling below an objective standard of reasonableness under prevailing professional norms, and that the deficiency was prejudicial to the defendant. *People v Hurst*, 205 Mich App 634, 640-641; 517 NW2d 858 (1994).

Here, the record indicates that, in defendant's presence at sentencing, defense counsel stated:

Your Honor, Mr. Lee and I have reviewed the Pre-Sentence Report *together*, and find it is factually accurate. *There are no changes*, or additions to be made. [Emphasis added.]

Therefore, we find that a review of the record not only fails to support defendant's claim, it blatantly contradicts it. Accordingly, the record does not support a finding that his counsel's performance fell below an objective standard of reasonableness, or committed any deficiency which was prejudicial to defendant. *Hurst, supra*, p 634.

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Charles W. Simon, Jr.