

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

UNPUBLISHED

September 24, 1996

No. 160716

LC No. 91-002511-FC;

91-002512-FH;

91-002513-FH;

91-002514-FH;

91-002515-FH;

91-002516-FH;

91-002517-FH;

91-002518-FH;

91-002519-FH;

91-002520-FC;

91-002521-FC;

91-002522-FC

CHARLES EUGENE GERARD,

Defendant-Appellant.

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant pleaded guilty to eleven counts of breaking and entering a building with intent to commit a larceny, MCL 750.110; MSA 28.305, four counts of safe breaking, MCL 750.531; MSA 27.799, two counts of breaking and entering a coin device, 752.811; MSA 28.643, one count of attempted breaking and entering a building, MCL 750.110; MSA 28.305, and one count of possession of a short-barreled shotgun, MCL 750.224b; MSA 28.421(2). He was thereafter sentenced to 6-2/3 to 10 years' imprisonment for the convictions of breaking and entering a building, twenty to forty years'

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

imprisonment for the convictions of safe breaking, two to three years' imprisonment for the convictions of breaking and entering a coin device, 3-1/3 to 5 years' imprisonment for the convictions of attempted breaking and entering a building and possession of a short-barreled shotgun. He appeals by leave granted. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Because the offense of safe breaking carries the highest statutory maximum sentence, the trial court was required to score the sentencing guidelines for that offense, not the other offenses. See Michigan Sentencing Guidelines Manual (2d ed), *Basic Information and General Instructions*, B(4), p 1. However, the sentencing guidelines do not apply to the offense of safe breaking. *People v Douglas (On Remand)*, 191 Mich App 660, 665; 478 NW2d 737 (1991). For that reason we do not believe the trial court erred in failing to score the sentencing guidelines for the breaking and entering offenses, as defendant contends. The court properly weighed the nature and number of the crimes committed by defendant in fashioning proportionate sentences. *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990); *People v Hunter*, 176 Mich App 319, 321; 439 NW2d 334 (1989); *People v Girardin*, 165 Mich App 264, 266; 418 NW2d 453 (1987). The record does not support defendant's assertion that the trial court made erroneous assumptions at sentencing. *People v Antoine*, 194 Mich App 189, 191; 486 NW2d 92 (1992).

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan