STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IVAN RAYNARD SLAUGHTER, a/k/a IVAN RAYMOND SLAUGHTER,

Defendant-Appellant.

UNPUBLISHED
November 1, 1996

No. 161162
LC No. 92-793-FC

Before: Michael J. Kelly, P.J., and O'Connell and K.W. Schmidt,* JJ.

PER CURIAM.

Defendant was convicted by jury of one count of armed robbery, MCL 750.529; MSA 28.797, two counts of assault within intent to commit murder, MCL 750.83; MSA 28.278, and three counts of possession of a firearm during the commission of a felony (felony-firearm). MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent two-year sentences with respect to the felony-firearm convictions, to be followed by concurrent sentences of twenty to forty years with respect to the armed robbery conviction and forty to eighty years with respect to each assault with intent to commit murder conviction. He now appeals as of right, and we affirm.

Defendant first asserts that the trial court committed clear error when it denied his motion to suppress incriminating statements made by him. Defendant argues that the trial court was not bound by nor required to follow the earlier decision of another circuit court judge, namely Judge Kingsley, and that defendant was entitled to a complete *Walker*[1] hearing before Judge Miller on the merits of the motion to suppress. We disagree. Judge Miller correctly determined that collateral estoppel forbids defendant from relitigating this issue where, in another case pending against defendant, a *Walker* hearing was held and the same statement was determined to be admissible. *People v Gray*, 393 Mich 1; 222 NW2d 515 (1974); *People v Mann*, 89 Mich App 511, 514; 280 NW2d 577 (1979). See also *People v Ward*, 133 Mich App 344, 352-353; 351 NW2d 208 (1984). The necessary elements for application of the doctrine are the same. The legal and factual issues are the same, there is an identity of parties—being the People of the State of Michigan and defendant—and the issues were actually

litigated and necessarily decided by Judge Kingsley. *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990).

Regarding defendant's second issue, we note that defendant moved below for a directed verdict on the charge of assault with intent to commit murder, but not on the charge of armed robbery, the offense on which defendant bases his argument on appeal. However, disregarding the preservation issue and viewing the evidence in a light most favorable to the prosecution, *People v Herbert*, 444 Mich 466, 473; 511 NW2d 654 (1993), we find there is sufficient evidence of specific intent to sustain defendant's conviction for armed robbery, MCL 750.529; MSA 28.797. A rational trier of fact could conclude that defendant's intent was not impaired to the extent that he could not have formed the specific intent to commit armed robbery. *People v Roberson*, 167 Mich App 501, 519; 423 NW2d 245 (1988). Moreover, because the jury found defendant guilty of robbery, it necessarily must have rejected his claim of intoxication. *Id.*

Third, contrary to defendant's assertion on appeal, the sentencing court expressly considered defendant's use of marijuana and alcohol, but simply determined that this did not excuse the commission of a crime. Provided only permissible factors are considered, it remains the role of the sentencing court to weigh facts deemed relevant to the sentencing decision. *People v Adams*, 430 Mich 679, 686-687; 425 NW2d 437 (1988). The primary case relied on by defendant in support of his claim, *People v Murray*, 72 Mich 10; 40 NW 29 (1888), is distinguishable from the instant case. The Court in *Murray* held that while intoxication is not a legal defense for rape, which is a general intent crime, intoxication could mitigate the sentence imposed for that crime. However, intoxication *is* a legal defense to armed robbery, a specific intent crime. *Roberson, supra* at 519. Because defendant was convicted of armed robbery and of assault with intent to commit murder, also a specific intent crime, *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995), defendant's claimed intoxication should not serve to benefit defendant in his sentencing. *Roberson, supra.*

Fourth, the trial court did not err in refusing to strike the statements by Cletis Mathis in the presentence investigation report (PSIR). The statements were appropriately included under MCR 6.425(A)(12), i.e., any other information that may aid the court in sentencing. Neither defendant nor his attorney alleged that the statements were inaccurate or that defendant had not been involved in the other robberies. Although defendant now asserts that he should have been allowed to confront Mathis at a hearing to challenge the veracity of Mathis' statements, no evidentiary hearing was requested. Accordingly, defendant has failed to preserve this claim for appellate review. See *People v Lawrence*, 206 Mich App 378, 380; 522 NW2d 654 (1994).

Defendant further asserts in his fourth issue on appeal that neither Dr. Bradley's report nor information regarding defendant's participation in special education classes for the emotionally impaired was added to the PSIR as ordered by the trial court. Copies of psychiatric reports must be sent to the Department of Corrections. MCL 771.14(7); MSA 28.1144(7); MCR 6.425. Defense counsel should have had an opportunity to review the corrected PSIR before it was sent to the Department of Corrections, MCR 6.425(D)(3)(b), and the omissions, if any, should have been corrected at that time. If the PSIR has not been amended to include the above information, the information should be added to

the report and a corrected copy of the report should be transmitted to the Department of Corrections. *People v Martinez (After Remand),* 210 Mich App 199, 203; 532 NW2d 863 (1995).

As to the fifth issue raised by defendant, this Court will uphold a trial court's scoring decision of guidelines' calculations if evidence exists to support the score. *People v Hernandez,* 443 Mich 1, 16; 503 NW2d 629 (1993). Ample evidence exists on the record to support the court's score of fifty points for excessive brutality under Offense Variable (OV) 2 and its score of ten points for OV 9 for defendant's leadership role.

Contrary to defendant's six assertions on appeal, the sentencing court did place its reasons for departure from the guidelines both on the record and on the departure form attached to the sentencing information report (SIR) as required. *People v Fleming,* 428 Mich 408, 428; 410 NW2d 266 (1987). Although the SIR that defendant has furnished this Court does not have a copy of the departure form attached to it, the original SIR in the court file does appropriately have the departure form attached to it. The circuit court should verify that a copy of the departure form was sent to the State Court Administrative Office as required by the Michigan Sentencing Guidelines (2d ed, 1988) Departure Policy, and a copy should be furnished to defense counsel upon its request. Defendant further contends that the sentencing court denied him due process of law in considering the other robberies with which he was charged but not convicted. This claim is without merit. Although defendant was given ample opportunity at sentencing, defendant failed to challenge either the prosecutor's argument that defendant was involved in a crime spree or the probation agent's statement in the PSIR that defendant was involved in multiple robberies. See *People v Granderson,* 212 Mich App 673, 678-679; 538 NW2d 471 (1995); *People v Potrafka,* 140 Mich App 749, 751-752; 366 NW2d 35 (1985). Therefore, the court appropriately considered the pending charges against defendant and defendant's involvement in a crime spree. *People v Ewing (After Remand),* 435 Mich 443, 446 (opinion by Brickley, J.), 473 (opinion by Boyle, J.); 458 NW2d 880 (1990); *People v Coulter (After Remand),* 205 Mich App 453, 456; 517 NW2d 827 (1994).

Seventh, the sentences imposed for armed robbery and assault with intent to commit murder are not disproportionate, but rather reflect the "seriousness of the matter." *People v Houston,* 448 Mich 312, 320; 532 NW2d 508 (1995); *People v Merriweather,* 447 Mich 799, 808; 527 NW2d 460 (1994); *People v Milbourn,* 435 Mich 630, 661; 461 NW2d 1 (1990). Because the sentences are not disproportionate in relation to the crimes, they do not constitute cruel or unusual punishment. *People v Bullock,* 440 Mich 15, 40-41; 485 NW2d 866 (1992); *People v Williams (After Remand),* 198 Mich App 537, 543; 499 NW2d 404 (1993).

Finally, a different judge need not be appointed the only tasks left to perform are administrative and ministerial in nature. Even if resentencing was required, we have full confidence that Judge Miller would be fair and impartial in this matter and that appointment to a different judge would not be warranted.

Defendant's convictions and sentences are affirmed. The trial court shall transmit a corrected copy of the PSIR to the Department of Corrections and transmit a copy of the sentencing guidelines departure form to the State Court Administrative Office, if these have not already been sent. We see no

reason to remand this case for the purposes of performing

administrative or ministerial tasks. See *People v Yeoman*, ___ Mich App ___; ___ NW2d ___ (Docket No. 165345, issued 8/23/96).

/s/ Peter D. O'Connell
/s/ Kenneth W. Schmidt

I concur in result only.

/s/ Michael J. Kelly

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