

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GERARD WALTER MONTOUR,

Defendant-Appellant.

UNPUBLISHED
November 8, 1996

No. 175782
LC No. 93-002738

Before: Michael J. Kelly, P.J., Hoekstra and E.A. Quinnell,* JJ.

MEMORANDUM.

Defendant was convicted by jury trial of breaking and entering, MCL 115; MSA 28.310, assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, felony-firearm, MCL 750.227b; MSA 28.424(2), and larceny in a building, MCL 750.360; MSA 28.592. Defendant was sentenced to 90 days' imprisonment for breaking and entering, 2 ¼ to 10 years' imprisonment for larceny in a building, and 2 years' imprisonment for felony-firearm. The sentences for breaking and entering, assault with intent to commit great bodily harm, and larceny in a building were ordered to be served concurrent to each other, but consecutive to the felony-firearm sentence. Defendant now appeals as of right. We affirm.

Defendant raises numerous issues in two briefs on appeal filed by different appellate counsel and a supplemental in pro per brief, none of which we find meritorious. The evidence produced at trial was sufficient to establish that defendant committed assault with intent to commit great bodily harm, breaking and entering, larceny and felony firearm. Defendant was not denied the effective assistance of counsel and was not denied a fair and impartial trial due to alleged prosecutorial misconduct. The trial court was correct in ruling that defendant was not in custody when questioned by his probation officer and therefore was not entitled the protections of *Miranda*

Affirmed.

/s/ Michael J. Kelly
/s/ Edward A. Quinnell

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

Judge Joel P. Hoekstra concurring in result only.