

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD EDWARD WOODS,

Defendant-Appellant.

UNPUBLISHED

January 24, 1997

No. 187099

Macomb Circuit Court

LC No. 95-000127

Before: Doctoroff, P.J., and Hood and Paul J. Sullivan,* JJ.

PER CURIAM.

Following his arrest on December 21, 1994, defendant in this case, Ronald Edward Woods, pleaded guilty to Operating Under the Influence of Intoxicating Liquor (OUIL) in violation of MCL 257.625(1); MSA 9.2325. At the time of his arrest, defendant was driving without a license because his license had been previously revoked for prior drunk driving arrests. Over the sixteen year period preceding defendant's arrest in this case, defendant had 14 prior alcohol related convictions. The probation department recommended a prison sentence of 2½ to 7½ years. The trial court sentenced defendant to 5 to 7½ years' imprisonment. The trial court denied defendant's post-judgment motion requesting resentencing or plea withdrawal. On appeal, defendant claims several errors entitle him to withdraw his guilty plea. We affirm.

Defendant first contends that his sentence is disproportionate. However, considering defendant's extensive history of drinking and driving, we find that the sentence of 5 to 7½ years' imprisonment is proportionate to the circumstances of defendant and his record. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Defendant had been given many opportunities to reform his behavior, yet continued to jeopardize himself and others by repeatedly driving after consuming alcohol. We agree with the trial court that, at some point, the focus must shift to protection of the community. Because defendant has repeatedly shown an inability to refrain from drinking and driving, we find the sentence imposed by the trial court to be proportionate. See *People v Kennebrew*, ___ Mich App ___, ___ NW2d ___ (Docket Nos 158699, 158700, Dec'd 12/27/96), slip op p 6.

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

In defendant's second issue, he argues that his sentence was improperly enhanced based on a conviction that did not exist. His objection is based on the Information which mistakenly listed his prior OUIL-3rd conviction as being a district court conviction rather than a circuit court conviction. Despite the defect in the Information, defendant pleaded guilty to the charge. Generally, a guilty plea waives any challenge to the prior convictions used to enhance an OUIL conviction. *People v Haker*, 158 Mich App 570, 572; 405 NW2d 204 (1987). In addition, defendant does not dispute that he was convicted of the offense on the specified date – his only objection was that the Information stated the wrong court in which the conviction was entered. This defect did not cause a constitutional error, and thus the error did not render defendant's guilty plea invalid. See *Haker, supra*. This is especially true because defendant was admittedly convicted of a total of fourteen previous drunk driving crimes. Thus, even if the conviction listed on the information was invalid, he would still have a sufficient record to be charged with OUIL-3rd offense. Accordingly, any error was harmless beyond a reasonable doubt.

In defendant's next argument, he contends that the trial court improperly used the same conviction to push the crime to OUIL-3rd and to render him an habitual offender. Defendant contends that the same conviction cannot be used to lengthen his sentence by rendering it the 3rd offense and then also used to render him an habitual offender and further lengthening the sentence. We disagree.

In *People v Bewersdorf*, 438 Mich 55; 475 NW2d 231 (1991), the Michigan Supreme Court decided that the same conviction could be used both to push defendant's crime to OUIL-3rd and to increase the sentence under the habitual sentence scheme. Subsequent to *Bewersdorf*, this Court held in *People v Weatherholt*, 214 Mich App 507; 543 NW2d 34 (1995) that a prior OUIL conviction is no longer an element of a substantive OUIL-3rd offense, but was merely a sentence enhancement scheme. Based on *Weatherholt*, defendant contends that *People v Brown*, 186 Mich App 350; 463 NW2d 491 (1990) holds that the same conviction cannot be used to enhance the sentence under both an OUIL-3rd conviction and the habitual offender scheme because the two schemes would conflict. However, *Brown* held that "because two different statutory schemes are involved, a conflict does not arise from the mutual application of the two statutes to the same prior conviction." *Brown* at 357. The Habitual Offender Act and the OUIL-3rd statute are clearly two different statutory schemes, and thus both should be implemented. *Brown, supra*. The two statutory schemes can both be implemented to carry out the legislative intent of increasing punishment for recidivist drunk drivers. *Bewersdorf, supra* at 69-71, 74.

In 1994, the Michigan Legislature amended the Habitual Offender Act such that a prosecutor no longer was required to prove the defendant's prior felony conviction at trial, but merely needed to establish the prior felony at sentencing. MCL 769.13; MSA 28.1085. Although major controlled substances were excluded from application of the amended law, OUIL-3rd convictions were not. Thus, the legislative intent to punish recidivist drunk drivers was unchanged by the 1994 amendments, and *Bewersdorf* remains controlling. Accordingly, defendant's argument fails. Defendant's previous conviction was properly used both as the basis for charging him as OUIL-3rd and for increasing his sentence as an habitual offender.

Defendant next argues that the sentencing judge should have been disqualified from sentencing due to a loss of judicial impartiality. However, defendant never raised this issue at sentencing, even though he knew of the basis for this objection at that time. Thus, he waived any objection, and is precluded from now raising it. *People v Ensign*, 112 Mich App 286, 290; 315 NW2d 570 (1982). Even if we were to address the merits, the trial court's comments, taken in context, did not demonstrate actual prejudice. *People v Jones*, 179 Mich App 339, 343; 445 NW2d 518(1989).

In defendant's next issue, he argues that prior convictions for sentence enhancement purposes should have been proven at a separate hearing, as opposed to being established as part of the plea-taking procedures. However, defendant failed to object to the procedure at sentencing, and thus failed to preserve the issue for appellate review. *People v Lawrence*, 206 Mich App 378, 380; 522 NW2d 654 (1994). Furthermore, even if we were to reach this claim, we find defendant's argument is without merit. Although the statutes in question require that the previous convictions be demonstrated at sentencing, no adversarial hearing is required. Defendant admitted to the prior convictions on the record at the guilty plea proceeding, thus, an adversarial hearing at the time of sentencing was unnecessary.

Defendant next contends that he should be allowed to withdraw his guilty plea because he was not advised of the mandatory minimum sentence for his crime. However, the mandatory one-year term of imprisonment in this case was required only if defendant was sentenced to a term of imprisonment. Under the law, the trial court could have imposed only a fine and thus given *no* prison sentence. In this situation, it was not error for the sentencing court to fail to inform defendant of the mandatory minimum sentence. *People v Evans*, 132 Mich App 239, 242; 347 NW2d 28 (1984).

Defendant next argues that the trial court failed to inform him of the consequences of pleading guilty, as required by MCL 257.625b(3); MSA 9.2325(2). However, the trial court informed defendant that the charge carried a maximum penalty of 7½ years' imprisonment. Defendant also argues that the trial court failed to inform defendant of the consequences the conviction would have on his driver's license. However, the conviction would have no effect because defendant's license had already been revoked. Thus, defendant's contentions are without merit.

Finally, defendant claims that there was insufficient basis for charging him with OUIL-3rd because defendant seemed unclear as to the exact conviction the court referenced. However, after some initial confusion, defendant indicated that he was "with" the court as to the specific convictions referenced by the trial judge. In addition, defendant twice admitted that he had two prior convictions of OUIL. Defendant's confusion regarding specific dates and courts, which no doubt stemmed from the fact that he had a total of 14 previous drunk driving arrests, did not negate the inculpatory nature of his admissions of guilt. Accordingly, we decline to reverse on this ground.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Paul J. Sullivan