STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GORDON SCOTT ROOSE,

Defendant-Appellant.

UNPUBLISHED
March 25, 1997

No. 193393
Eaton Circuit Court
LC No. 95-000064-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty of breaking and entering an occupied dwelling with intent to commit larceny, MCL 750.110; MSA 28.305, and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. He was sentenced to 10 to 22-1/2 years' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant raises multiple reasons why the trial court erred in scoring the sentencing guidelines. We note that defendant was sentenced as an habitual offender and that the guidelines do not apply to habitual offenders. *People v Gatewood*, 450 Mich 1025; 546 NW2d 252 (1996); *People v Cervantes*, 448 Mich 620; 532 NW2d 831 (1995). In general, habitual offenders do not have standing to object to the alleged errors in the scoring of the guidelines. *People v Yeoman*, 218 Mich App 406; 554 NW2d 577 (1996); *People v Dixon*, 217 Mich App 400, 411; 552 NW2d 663 (1996). However, because the trial court scored the guidelines and gave them some consideration in its sentencing decision, we will briefly address the merits of defendant's claims.

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*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

The trial court did not abuse its discretion in scoring Offense Variable 8 at ten points. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993); *People v Daniels*, 192 Mich App 658, 674; 482 NW2d 176 (1992). While defendant held some jobs in the past, there was no evidence offered by him that he was able to support himself through legitimate sources of income. Because defendant admitted to stealing and cashing bad checks to purchase drugs when he was unemployed, there was adequate evidence to support the scoring of OV 8. *People v Ayers*, 213 Mich App 708, 724-725; 540 NW2d 791 (1995).

Next, the trial court did not err in scoring OV 9 at ten points. We believe that the trial court correctly applied the instructions for OV 9. Although the instructions use the phrase "multiple offender situation" and the term "offender" is defined in the instructions as a defendant who has been convicted, to interpret the instructions as defendant urges would provide an absurd and illogical result. *People v Jones*, 217 Mich App 106, 107; 550 NW2d 844 (1996); *People v Williams*, 205 Mich App 229, 232; 517 NW2d 315 (1994). That is, defendant's interpretation would foreclose scoring points whenever a codefendant was still awaiting trial. Accordingly, we hold that the instructions for OV 9 do not require that any accomplices be either convicted or charged in order for the court to assess points under this variable.

Further, the trial court did not err in considering the facts surrounding the dismissed charge of uttering and publishing when scoring OV 17. The instructions for that variable expressly provide that the facts surrounding charges dismissed pursuant to a plea agreement may be considered. Defendant's reliance on *People v Benson*, 142 Mich App 720, 723; 370 NW2d 16 (1985), is misplaced. The holding of that case involved the first edition of the sentencing guidelines, not the current edition.

Finally, as noted previously, the sentencing guidelines do not apply to habitual offenders. *Gatewood, supra*; *Cervantes, supra*. The trial court therefore did not err in declining to give the guidelines much weight in deciding upon a proportionate sentence for defendant. *People v Haacke*, 217 Mich App 434, 436-438; 553 NW2d 15 (1996).

Affirmed.

/s/ Daniel F. Walsh
/s/ Robert P. Griffin
/s/ Walter P. Cynar