

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDDIE J. PRESTON,

Defendant-Appellant.

UNPUBLISHED

April 4, 1997

No. 189421

Oakland Circuit Court

LC No. 95-137047

Before: Fitzgerald, P.J., and MacKenzie and A.P. Hathaway*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant also pleaded guilty to being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. He was sentenced to thirteen to thirty years' imprisonment for the armed robbery. This sentence was then vacated and defendant was sentenced to thirteen to thirty years' imprisonment for the habitual offender conviction, to run consecutive to the two years' imprisonment for the felony-firearm conviction. Defendant now appeals as of right. We affirm.

Defendant's conviction arose from the robbery of a gas station on the morning of September 26, 1994. Defendant first claims that the inculpatory statements made by Debra Ann Kniffen, a codefendant, were inadmissible pursuant to MRE 801(d)(2). However, at trial, defendant objected to the testimony based on a violation of his right to confront witnesses pursuant to *Bruton v United States*, 391 US 123; 88 S Ct 1620; 20 L Ed 2d 476 (1968). Because defendant raises objections on different grounds on appeal than raised below, the issue has not been properly preserved. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996).

Defendant next argues that the evidence was insufficient to support his convictions due to a mistaken identification by Charles Leibrand, the complaining witness. We disagree.

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

In reviewing the sufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim's presence or person, and (3) while the defendant is armed with a weapon described in the statute. *People v Turner*, 213 Mich App 558, 569; 540 NW2d 728 (1995).

Defendant claims that the lack of a proper identification precludes finding that there was sufficient evidence to determine that he was guilty beyond a reasonable doubt. However, there is abundant testimony, aside from the identification by Leibrand, which implicates defendant in this crime, including admissions of guilt by defendant to three different individuals. Although defendant raises issues of credibility regarding these witnesses, questions of credibility and reliability are left to the jury to decide. *People v Barclay*, 208 Mich App 670, 675-676; 528 NW2d 842 (1995). Therefore, we find that the evidence was sufficient to support defendant's convictions.

Defendant also claims that the sentence of thirteen to thirty years' imprisonment is disproportionate, thus requiring resentencing. This Court reviews sentences imposed by the trial court for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 636, 654; 461 NW2d 1 (1990). A sentence constitutes an abuse of discretion if it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.*

Defendant first argues that the sentences imposed are disproportionate because the court failed to take into account that he was induced by others into committing the crime. Defendant claims that such inducement constitutes substantial and compelling reasons to reduce the minimum sentence of thirteen years. First, we note that there is no evidence on the record to support defendant's claim that he was induced to commit the crime. Indeed, of the three people involved in the crime, defendant was the actual perpetrator of the robbery. Moreover, defendant was sentenced as a fourth-time habitual offender pursuant to MCL 769.12; MSA 28.1109. Because defendant's conviction for armed robbery had a possible maximum sentence of 5 years or more, the trial court's sentence is within the required boundaries as set forth in MCL 769.12; MSA 28.1109.

Defendant next argues that his sentences are disproportionate because they will not commence until the expiration of the maximum remaining sentence for a prior breaking and entering conviction for which he was on probation. However, defendant's sentences are not disproportionate merely because they run consecutively to defendant's prior breaking and entering sentence. *People v Clark*, 207 Mich App 500, 502-503; 526 NW2d 357 (1994). Therefore, defendant's argument has no merit. Rather, given defendant's criminal background and the circumstances of the offense, we find that the sentences are proportionate.

Defendant's final claim on appeal is that he was denied effective assistance of counsel because trial counsel did not poll each juror after the verdict was rendered. However, this issue has not been preserved because defendant failed to raise it below. Appellate review is therefore foreclosed unless the

record contains sufficient detail to support defendant's claims. *People v Dixon*, 217 Mich App 400, 408; 552 NW2d 663 (1996). We find that counsel's failure to poll the jury did not fall below an objective standard of reasonableness under prevailing professional norms. Moreover, defendant has not demonstrated that there was a reasonable probability that, but for counsel's failure to poll the jury, the result of the proceedings would have been different. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994). Accordingly, defendant was not denied his right to effective assistance of counsel.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Barbara B. MacKenzie
/s/ Amy P. Hathaway