

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD EUGENE DAUGHERTY,

Defendant-Appellant.

UNPUBLISHED

May 16, 1997

No. 188983

Monroe Circuit Court

LC No. 95-26635 FH

Before: Corrigan, C.J., and Young and M.J. Talbot*, JJ.

MEMORANDUM.

A jury acquitted defendant of first degree home invasion but convicted him of entering without breaking with intent to commit larceny. He was sentenced as a third offender to an enhanced term of 5 to 10 years' imprisonment. Defendant now appeals by right.

Defendant first argues the trial court erred in refusing to instruct the jury, as requested, on the lesser included misdemeanor offense of entry without permission, MCL 750.115; MSA 28.310. We disagree. Where defendant testified that he never entered the burgled apartment or got closer than a flight of stairs and 40 feet away, where the codefendant identified defendant as the principal perpetrator of the breaking and entering, and where the occupants of the premises identified the codefendant as the principal perpetrator, with half the victims identifying defendant as the second person to enter the apartment, and all testified that, *after* the second person entered, a hole was smashed through the bathroom door where the victims had taken refuge, and money demanded, only *after* which was a voice heard to say "Let's get out of here" or words to that effect, a rational view of the evidence would not permit the jury to find defendant guilty of entry without permission. On defendant's testimony, he was not guilty of any crime; on the testimony of the codefendant, defendant was guilty of first degree home invasion. On the testimony of the victims, in contrast to *People v Blevins*, 30 Mich App 72; 186 NW2d 82 (1971), where the defendant entered the burgled premises only for the innocent purpose of attempting to persuade the burglar to terminate his criminal enterprise, here any urging to quit the premises occurred only after a larceny, robbery, or act of extortion had been consummated by both

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

intruders. Accordingly, the trial court did not err in refusing to instruct the jury on the lesser included misdemeanor offense. *People v Hendricks*, 446 Mich 435, 448 n 18; 521 NW2d 546 (1994).

Arraignment on the supplemental information occurred on March 3, 1995, but defendant filed no motion prior to sentencing challenging the accuracy or constitutional validity of any of such prior convictions, as required by MCL 769.13(4); MSA 28.1085(4), for this crime committed after May 1, 1994. The trial court thus had no obligation to conduct a hearing to resolve a nonexistent challenge under MCL 769.13(6); MSA 28.1085(6), and there was no error in adjudicating defendant a third offender for sentence enhancement purposes.

The sentence guidelines are irrelevant to an analysis of the proportionality of defendant's enhanced sentence. *People v Edgett*, 220 Mich App 686; ___ NW2d ___ (1996). A five to ten year enhanced sentence does not represent an abuse of the trial court's sentencing discretion on this record. *People v Houston*, 448 Mich 312; 532 NW2d 508 (1995); *People v Gatewood (On Remand)*, 216 Mich App 559; 550 NW2d 265 (1996).

Affirmed.

/s/ Maura D. Corrigan
/s/ Robert P. Young, Jr.
/s/ Michael J. Talbot