STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD ALFRED HOLDEN,

Defendant-Appellant.

UNPUBLISHED
June 20, 1997

No. 182916
Saginaw Circuit Court
LC No. 94-009190-FC

Before: Gribbs, P.J., and Sawyer and Young, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of assault with intent to do great bodily harm less than the crime of murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant thereafter admitted to a habitual offender (second offense). MCL 769.10; MSA 28.1082. He was sentenced to four to fifteen years in prison on the assault conviction and to the mandatory two-year consecutive sentence on the felony-firearm conviction. He now appeals and we affirm.

Defendant first argues that the trial court erred in denying his motion for a directed verdict on the original charge of assault with intent to murder. We disagree. We review this issue by looking at the evidence in the light most favorable to the prosecution and determining whether a rational trier of fact could conclude that each element was proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), modified on other grounds 441 Mich 1201 (1992).

In the case at bar, there was sufficient evidence from which the jury could have concluded that defendant possessed the intent to kill. Defendant pulled a gun, pointed it at the victim and, while the victim was attempting to run away, defendant fired from one to eight rounds, one of which struck the victim. Furthermore, defendant's action was preceded by the statement, "I'll kill you." A rational trier of fact could have concluded that defendant possessed the intent to kill. Accordingly, the trial court correctly denied defendant's motion for a directed verdict.

Next, defendant argues that the trial court erred in treating defendant's status as a habitual offender as a separate conviction and listing it as such on the judgment of sentence. Therefore,

defendant argues, he is entitled to a corrected judgment of sentence. We disagree. Defendant argues that amendments in 1994 to the habitual offender statute provided that habitual offender status is no longer a separate criminal offense. Defendant is only partially correct. He is correct that habitual offender status is not a separate criminal offense. However, that is not a product of the 1994 amendments, but rather it has always been the case that habitual offender status is not a separate substantive offense. See *People v Derbeck*, 202 Mich App 443, 447; 509 NW2d 534 (1993).

In any event, we are not persuaded that defendant's judgment of sentence must be changed. First, the *Derbeck* opinion suggests that habitual offender status should be included on the judgment of sentence. *Id*. at 446. Furthermore, we fail to see any prejudice to defendant by including the information. The information, that defendant is a habitual offender and was sentenced as such, is accurate. Moreover, that information is potentially helpful to the Department of Corrections in how to handle defendant within the corrections system. For that matter, the information is necessary in order to demonstrate that the trial court was acting lawfully in imposing a sentence which, absent defendant's habitual offender status, would exceed the statutory maximum.

Perhaps it would be better for the judgment of sentence form to have a separate location for the sentencing judge to indicate the defendant's habitual offender status. We would certainly urge the State Court Administrator to consider such a change to the standard form (SCAO form CC 219b). However, we see no need to "correct" defendant's judgment of sentence form inasmuch as it accurately notes defendant's habitual offender status.

Finally, defendant argues that the trial court abused its discretion in considering a sixteen-year-old armed robbery conviction in enhancing defendant's sentence. We disagree. This Court decided in *People v Zinn*, 217 Mich App 340, 349; 551 NW2d 704 (1996), that there is no constitutional impediment to considering convictions that are ten or more years old in establishing habitual offender status. Therefore, the trial court's consideration of defendant's armed robbery conviction was not improper. Rather, we believe the question is whether, in light of the circumstances, including the nature and age of defendant's prior convictions, the sentence imposed was proportionate. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We are satisfied that the sentence imposed is proportionate to this offense and this offender.

Affirmed.

/s/ Roman S. Gribbs
/s/ David H. Sawyer
/s/ Robert P. Young, Jr.