

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD McMILLAN,

Defendant-Appellant.

UNPUBLISHED

August 26, 1997

No. 193834

Muskegon Circuit Court

LC No. 95-138441-FH

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction of OUIL, which was enhanced at sentencing to one of OUIL, third offense, and habitual offender, second offense, resulting in a 3- to 7½year sentence. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that because, during preliminary instructions immediately after jury selection, the trial court mentioned that the offense is a misdemeanor, the jury was misled into believing that this case was unimportant. Nothing about either that instruction or all the other instructions, viewed in their entirety, could reasonably have suggested to the jury that it should not have taken its job seriously. If this could be deemed error at all, it is unpreserved and nothing in the record indicates it was outcome determinative, so appellate relief on this claim is unwarranted. *People v Grant*, 445 Mich 535; 520 NW2d 123 (1994).

Not only was this defendant's fifth OUIL offense, but he has prior misdemeanor convictions for malicious destruction of a building under \$100 and assault and battery, inter alia. Defendant's previous third offense OUIL had resulted in a one-year jail sentence, plus two years' probation, which failed to deter commission of the present offense. A 3- to 7½year sentence as a second offender does not represent an abuse of the trial court's sentencing discretion on this record. *People v Hansford (After Remand)*, 454 Mich 320; 562 NW2d 460 (1997).

Affirmed.

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

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Edward A. Quinnell