

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT ALLEN EDISON,

Defendant-Appellant.

UNPUBLISHED
October 31, 1997

No. 196164
Macomb Circuit Court
LC No. 95-000710 FH

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Defendant was convicted by a jury of unlawfully driving away an automobile, MCL 750.413; MSA 28.645, and sentenced to serve an enhanced prison terms of two to ten years, based on defendant's status as an habitual offender, third offense. He appeals as of right and we affirm.

Defendant first contends that the trial court erred in ruling his confession admissible after a *Walker* hearing. When reviewing such a ruling, the trial court's findings of historical fact are reviewed only for clear error, while mixed findings of fact and law, and determinations of law, are reviewed de novo. *Thompson v Keohane*, 516 US ____; 116 S Ct 457; 133 L Ed 2d 383 (1995). Here, as a question of historical fact, the trial court determined that defendant's version of the facts was not credible. We find no clear error in this determination. Indeed, by his own testimony, defendant was not under the influence of drugs when he was interrogated, although he claimed to be suffering from withdrawal symptoms. No such symptoms were observed by the interrogating officer. As the trial court noted, defendant is intelligent and experienced in dealing with the police, given his past criminal record, and there is no credible evidence to support the claim that his confession was the product of intoxication sufficient to implicate his Fifth Amendment rights. *People v Leighty*, 161 Mich App 565, 571; 411 NW2d 778 (1987). Under the totality of the circumstances, the confession was voluntary and therefore admissible. *People v Cipriano*, 431 Mich 315; 429 NW2d 781 (1988).

As an habitual offender, defendant's claim of sentence disproportionality is subject to appellate review only for abuse of the trial court's sentencing discretion. *People v Hansford (After Remand)*, 454 Mich 320; 562 NW2d 460 (1997). Where defendant could have received a sentence of 6 2/3 to

10 years, yet received a minimum sentence of 2 years, no abuse of the trial court's sentencing discretion has been established.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs