STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JORGE LUIS TORRES,

Defendant-Appellant.

UNPUBLISHED
February 10, 1998

No. 193859
Recorder's Court
LC No. 95-008490

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

In a bench trial in which he was originally charged with two counts of assault with intent to murder, MCL 750.83; MSA 28.278, and felony firearm, MCL 750.227b; MSA 28.424(2), defendant was convicted of felonious assault, MCL 750.82; MSA 28.277 and felony firearm. Defendant, a juvenile who was tried as an adult pursuant to the automatic waiver provisions of MCL 600.606; MSA 27A.606 and MCL 725.10a(1)(c); MSA 27.3950(1)(1)(c), was then sentenced as an adult to 32 to 48 months' imprisonment on each count of felonious assault and the statutorily mandated 2 years for the felony firearm charge. He now appeals as of right.

Defendant first contends that the trial court erred in failing to conduct a sentencing disposition hearing to determine whether defendant should be sentenced as a juvenile or as an adult pursuant to MCR 6.931(b) and (c). At the commencement of the sentencing proceeding, defense counsel informed the court that, in light of the fact that all requisite official reports necessary to the conduct of such hearing had been prepared and filed, and all recommended treating defendant as an adult, and having counseled his client and defendant's father, they too concurred that the sentencing of defendant as an adult was appropriate. Assuming arguendo that this did not constitute a valid waiver of the dispositional hearing, or that such hearing is not subject to waiver, any error consists of the violation of a statute and court rule, as to which there was no contemporaneous objection. This is accordingly an unpreserved, nonconstitutional error for which appellate relief requires proof of prejudice. *People v Lane*, 453 Mich 132, 141; ___ NW2d ___ (1996).

There was no prejudice here, because, given the factual concessions made by defense counsel at sentencing as to the evidence that would be adduced at any such dispositional hearing, and the subsequent action of the trial judge in imposing the maximum sentences authorized by the two-thirds rule of *People v Tanner*, 387 Mich 189 NW2d 202 (1972), there is no reasonable possibility that defendant would have been sentenced as a juvenile, and if error this was, it was harmless.

In imposing sentence, the trial court reflected that defendant had had numerous contacts with the juvenile system, without positive effect on defendant's behavior. The trial judge concluded that while reformation of defendant might thus be beyond the realm of legitimate possibility, defendant's actions warranted punishment and that the punishment should be devised to deter others from committing like offenses. Defendant contends that the trial court failed to individualize the sentence, but the record reflects that the trial judge took into account only valid and proper sentencing considerations. *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972).

Finally, defendant contends that the trial court erred in its scoring of the sentence guidelines. Such issues are in any event not a proper basis for appellate relief, *People v Mitchell*, 454 Mich 145, 175; ___ NW2d ___ (1997), but even if claimed guideline scoring errors could furnish a proper basis for appellate relief, here the sentences imposed by the trial judge were in excess of the guidelines, which the sentence information report reflects were, in the opinion of the trial judge, "inadequate" to the task. Any error in scoring the guidelines would therefore be moot. *People v Hull*, 437 Mich 868; 462 NW2d 585 (1990).

Affirmed.

/s/ Hilda R. Gage
/s/ William B. Murphy
/s/ Maureen Pulte Reilly