

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE NEAL, a/k/a THOMAS LANCE,

Defendant-Appellant.

UNPUBLISHED

February 18, 2000

No. 205044

Macomb Circuit Court

LC No. 96-002430-FH

Before: Hood, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), and larceny from a person, MCL 750.357; MSA 28.589. He was sentenced to concurrent terms of ten to twenty years' imprisonment for the home invasion conviction and five to ten years' imprisonment for the larceny conviction. He appeals as of right. We affirm.

Defendant first argues that his dual convictions for first-degree home invasion and larceny from a person violate the constitutional protections against double jeopardy. We disagree. Whether double jeopardy applies is a question of law that we review de novo. *People v White*, 212 Mich App 298, 304-305; 536 NW2d 876 (1995).

The home invasion and larceny statutes contain different elements, address different social norms, provide for different punishments, and are not otherwise hierarchical in nature. See MCL 750.110a(2); MSA 28.305(a)(2); MCL 750.357; MSA 28.589; see also *People v Rivera*, 216 Mich App 648, 650-651; 550 NW2d 593 (1996). Moreover, the home invasion statute explicitly reflects the Legislature's intent to allow for separate punishment of other crimes "arising from the same transaction." MCL 750.110a(6); MSA 28.305(a)(6). Further, as this Court has observed with regard to the former breaking and entering statute, the predecessor to the home invasion statute, breaking and entering is not a continuing offense but is completed once the actor has entered the building; therefore, any crime committed once inside the building is a separate act that may be separately punished. *People v Patterson*, 212 Mich App 393, 395; 538 NW2d 29 (1995). Accordingly, defendant's dual

convictions and punishment for home invasion and larceny from a person do not violate the constitutional prohibition against double jeopardy.

Defendant next argues that the trial court abused its discretion in allowing the prosecutor to impeach him with prior theft convictions for attempting to unlawfully drive away an automobile and receiving and concealing stolen property over \$100. We disagree. This Court reviews a trial court's decision to allow impeachment by evidence of a prior conviction for an abuse of discretion. *People v Coleman*, 210 Mich App 1, 6; 532 NW2d 885 (1995).

We agree with the trial court that the four- and seven-year-old convictions were at least moderately probative of defendant's veracity. See MRE 609(b); *People v Allen*, 429 Mich 558, 606 n 6; 420 NW2d 499 (1988). The prejudicial effect of admitting these convictions was minimal because they were dissimilar to the charged offenses, and there is no indication that their admission had a chilling effect on defendant's decision to testify. See MRE 609(b); *Coleman, supra* at 6; *People v Bartlett*, 197 Mich App 15, 20; 494 NW2d 776 (1993). Further, any prejudice was reduced by the trial court's jury instructions regarding the proper use of the evidence at the time of impeachment and again during final instruction. *People v Nelson*, 234 Mich App 454, 462; 594 NW2d 114 (1999). Accordingly, defendant has not shown that the trial court abused its discretion.

Defendant next argues that the trial court erred in denying his motion to dismiss based on an unlawful delay in the arraignment on the information. We disagree. The failure to hold the arraignment on the scheduled date constitutes harmless error unless the defendant demonstrates actual prejudice. MCR 6.113(A). Here, defendant alleged that he was prejudiced by the delay because it allowed the prosecutor to file a supplemental habitual offender information which, otherwise, would have been untimely. However, the trial court granted defendant's motion to dismiss the habitual offender information on March 11, 1997. Consequently, defendant has failed to demonstrate that he was prejudiced by the delay.

Defendant next contends that the trial court erred in denying his motion to dismiss for violation of the 180-day rule, MCL 780.131; MSA 28.969(1); MCR 6.004(D). Whether the 180-day rule applies to a defendant is a question of law that we review de novo. *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995). Our review of the record indicates that defendant was on parole hold status while awaiting trial and was subject to mandatory consecutive sentencing because he committed the crimes at issue while on parole for another offense. Accordingly, the 180-day rule does not apply to defendant, *People v Chavies*, 234 Mich App 274, 279-280; 593 NW2d 655 (1999), and the trial court properly denied defendant's motion to dismiss on that basis.¹

Finally, defendant argues that his ten to twenty year sentence for first-degree home invasion is disproportionate.² We disagree. Upon considering the circumstances surrounding the offense, defendant's extensive criminal history, defendant's poor potential for rehabilitation, the need for discipline, and the need to protect society from defendant's ongoing criminal conduct, we conclude that defendant's ten-year minimum sentence is proportionate to the offense and the

offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Rice (On Remand)*, 235 Mich App 429, 445-447; 597 NW2d 843 (1999).

Affirmed.

/s/ Harold Hood

/s/ Michael R. Smolenski

/s/ Michael J. Talbot

¹ It is not clear whether defendant also argues that his constitutional right to a speedy trial has been violated. See *People v Farmer*, 127 Mich App 472, 478; 339 NW2d 218 (1983) (“[a]lthough the 180-day rule is a legislative enactment of speedy trial policy, consideration of a constitutional challenge to a delayed trial requires an analysis separate from the 180-day issue”). To the extent defendant makes such an argument, it is not preserved for appeal because it was not set forth in the statement of questions involved. MCR 7.212(C)(5); *City of Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995). In any event, the argument lacks merit because defendant has failed to demonstrate that he was prejudiced by the delay. *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994).

² Defendant incorrectly states that he was sentenced as an habitual offender. As previously noted, the trial court dismissed the supplemental habitual offender information before trial, and there is no record evidence to support defendant’s assertion.