STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD LAMONT LESTER,

Defendant-Appellant.

UNPUBLISHED
October 31, 2006

No. 264605
Lenawee Circuit Court
LC No. 05-011560-FH

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of third-degree fleeing or eluding a police officer, MCL 257.602a(3). He was sentenced as an habitual offender, fourth offense, MCL 769.12, to a prison term of 24 to 240 months. He appeals as of right. We affirm.

I. FACTS

Defendant's convictions in Ohio were the basis for enhancing his sentence. The convictions include an habitual offender-fourth offense notice that refers to a January 13, 2003, conviction for "Escape," and two March 29, 2002, convictions for "Receiving Stolen Property." The presentence investigation report (PSIR) does not provide any information concerning the facts of defendant's Ohio convictions. It notes that defendant's criminal history includes "two adult misdemeanors and four adult felony convictions out of the state of Ohio." With respect to the escape conviction referenced in the information, the PSIR indicates that defendant was charged with escape and was sentenced to six months in jail. With respect to the receiving stolen property convictions, the PSIR indicates he was charged with receiving stolen property and was sentenced to 18 months' probation. Defendant argues that the trial court improperly sentenced him as an habitual offender without confirming that his prior convictions in Ohio were for offenses that would have been felonies under Michigan law.

II. STANDARD OF REVIEW

Defendant never contested his habitual-offender fourth status below, or objected to the court's consideration of his Ohio convictions for purposes of sentence enhancement, so this issue is unpreserved. Accordingly, our review is limited to plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 764-767; 597 NW2d 130 (1999).

III. ANALYSIS

Enhanced sentencing pursuant to MCL 769.10, 769.11, and 769.12 may be based on convictions that occurred in other states if the convictions "would have been for felonies or attempts to commit felonies in this state if obtained in this state." As explained in *People v Quintanilla*, 225 Mich App 477, 479; 571 NW2d 228 (1997), "[t]he act requires that the offense be a felony in Michigan under Michigan law, irrespective of whether the offense was or was not a felony in the state or country where originally perpetrated. Hence, the facts of the out-of-state crime, rather than the words of title of the out-of-state statute under which the conviction arose, are determinative."

On appeal, defendant relies on documentation concerning his Ohio convictions, but this documentation was not presented below and, therefore, is not properly before this Court. *People v Powell*, 235 Mich App 557, 561 n 4; 599 NW2d 499 (1999). The presentence investigation report indicates that defendant has four felony convictions from Ohio, but it does not refer to the facts of those crimes. In the absence of any evidence in the record concerning the facts of those offenses, defendant cannot establish a plain, i.e., "clear or obvious," sentencing error. *Carines, supra* at 763. Therefore, defendant is not entitled to appellate relief.

Affirmed.

/s/ Henry William Saad
/s/ Bill Schuette