

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILLIP WAYNE STRUBLE,

Defendant-Appellant.

UNPUBLISHED

August 22, 1997

No. 185365

Ottawa Circuit Court

LC No. 94-018147-FC

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

MEMORANDUM.

Defendant appeals by right from his jury conviction for carrying a concealed weapon and enhanced sentence, as a second offender, of 5 to 7½ years' imprisonment. We affirm.

Defendant first contends that he was improperly sentenced as a second offender because his only prior felony conviction involved an invalid adjudication of defendant as an adult when the offense was committed while he was a juvenile. In considering this issue, this Court has considered only some of the documentation which defendant has submitted as attachments to his brief. Those documents which are part of lower court records in this or other cases are within this Court's purview under principles of judicial notice based on the one court of justice concept found in Const 1963, art 6, § 1. *People v Snow*, 386 Mich 586, 591; 194 NW2d 314 (1972). Affidavits and other materials submitted ex parte have been ignored. *People v Taylor*, 383 Mich 338, 362; 175 NW2d 715 (1970).

Those materials establish that the date of the prior offense, to which defendant pled guilty, as set forth in the information, was November 15, 1978; defendant's date of birth, as reflected in the presentence report, was September 17, 1961, so defendant was seventeen years of age on the date of his prior offense and properly charged and convicted as an adult.

Even assuming, arguendo, that defendant may have been under seventeen years of age on the date of the prior offense, see MCL 712A.3; MSA 27.3178(598.3), defendant has failed to submit documentation establishing that jurisdiction was not waived by the probate court pursuant

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

to MCL 712A.4; MSA 27.3178(598.4). *People v Schneider*, 119 Mich App 480, 486-487; 326 NW2d 416 (1982). In any event, the issue would be waived by defendant's failure to raise such a challenge prior to sentencing pursuant to MCL 769.13(4); MSA 28.1085(4). *People v Zinn*, 217 Mich App 340; 551 NW2d 704 (1996).

Because defendant was validly adjudicated a second offender, his 5- to 7½year sentence is within statutory limits. In contending that this sentence is disproportionate, defendant refers to the sentence guidelines, but those guidelines are completely irrelevant to the evaluation of habitual offender sentences. *People v Edgett*, 220 Mich App 686; 560 NW2d 360 (1996). Habitual offender sentences are reviewed only for abuse of sentencing discretion. *People v Hansford (After Remand)*, 454 Mich 320; 562 NW2d 460 (1997). Given the circumstances of the offense, no abuse of the trial court's sentencing discretion has been established on this record.

Affirmed.

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