

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY TAYLOR,

Defendant-Appellant.

UNPUBLISHED

November 27, 2001

No. 222157

Wayne Circuit Court

LC No. 98-007097

Before: Zahra, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, second offense, MCL 750.227b. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to consecutive sentences of five years' imprisonment for the felony-firearm conviction and sixteen to twenty-four years' imprisonment for the assault conviction. Defendant appeals as of right, and we affirm.

On April 15, 1994, the victim was arguing with Cassandra or Sandra Holt in a bedroom of a residence. Defendant entered the bedroom and told the victim to leave the house. The victim and defendant exchanged obscenities. Defendant pulled a gun from his waist. The victim ran from the bedroom, but was shot in the back. The victim survived the shooting, but is deaf in his right ear and partially paralyzed on the right side of his face as a result of the shooting. Defendant failed to appear at the preliminary examination, and a *capias* issued on January 24, 1995. Defendant was apprehended in June 1998, and a parole hold issued on June 10, 1998. At trial, the victim testified that defendant "rode up on him" the day before the preliminary examination and told the victim not to go to court. Additionally, the homes of the victim, his sisters, and his mother were shot at within a week of the preliminary examination. The trial court, sitting as the trier of fact, struck the testimony regarding the residence of the mother because it was too remote in time. The trial court allowed the testimony regarding the threat to the victim prior to the preliminary examination and the damage to the victim's home. However, the trial court also noted that there was no correlation between the damage and defendant, and the testimony regarding the home of the victim's sisters was not stricken, but was of "limited relevance."

Defendant first argues that he was denied a fair trial and was sentenced on the basis of inaccurate information when the trial court admitted evidence of shootings at the homes of the

victim and his relatives. We disagree. The decision to admit evidence rests within the trial court's discretion, and we will reverse such decisions where there is an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Additionally, a trial judge, sitting as the trier of fact, is presumed to understand the law which allows him to comprehend the difference between admissible and inadmissible evidence. *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992).¹ In the present case, the trial court noted that there was no correlation between the shooting of the homes and defendant and noted that the evidence was of "limited relevance." We cannot conclude that the trial court abused its discretion by admitting the evidence. *Lukity, supra*. Furthermore, there is no indication in the record that the trial court considered the shootings as a factor when sentencing defendant. Accordingly, this claim of error is without merit.

Defendant next argues that he was deprived of his right to a jury trial for his habitual offender supplemental information. The prosecutor agrees that defendant was entitled to a jury trial, but argues that defendant has failed to demonstrate plain error that affected substantial rights. We agree with the prosecution. Defendant committed the instant offense on April 15, 1994. At the time of the offense, MCL 769.13 provided that, in response to the habitual information, the offender could deny the prior convictions, and a jury would be impaneled to determine the issues raised in the information. On May 1, 1994, MCL 769.13 was amended to remove the jury trial determination of the validity of prior convictions. The amendment provides that once a defendant is given notice of an enhancement of a sentence based on prior convictions, the defendant may challenge the validity of the prior convictions by a written motion. MCL 769.13(4). The trial court resolves the challenges to the prior convictions. MCL 769.13(6).

Any confusion regarding the applicable provisions of the statute may be due to the fact that defendant was apprehended three and one half years after the commission of the crime. However, defendant raised no objection to the application of the current statutory provisions to his habitual information. A defendant may not waive objection to an issue before the trial court then raise it before this Court. *People v Clark*, 243 Mich App 424, 426; 622 NW2d 344 (2000). A holding to the contrary would allow defendant to harbor error as an appellate parachute. *Id.* Furthermore, the test for evaluating claims of unpreserved constitutional error is whether the defendant has demonstrated a plain error that affected substantial rights. *People v Carines*, 460 Mich 750, 764-766; 597 NW2d 130 (1999). While error may have occurred when the option of a jury trial was not given to defendant for the habitual information, defendant has failed to demonstrate that the error affected his substantial rights. Indeed, defendant has failed to present any evidence challenging the validity of his prior convictions. Accordingly, defendant's claim of error is without merit.

Defendant next argues, in a supplemental brief filed in propria persona, that the trial court erred in denying his motion to dismiss based on the 180-day rule. We disagree. The trial court's denial of the motion was proper. The 180-day rule did not apply to defendant because of his parole status. *People v Chavies*, 234 Mich App 274, 278-281; 593 NW2d 655 (1999).

¹ See also, *People v Beard*, 171 Mich App 538, 543-544; 431 NW2d 232 (1988) ("When a judge sits as the trier of fact, his verdict is presumed to be the result of a correct application of the law to the evidence presented.")

Defendant next argues that the trial court erred in denying his motion to dismiss based on unfair prejudice caused by prearrest delay. We disagree. In order to prevail, the defendant must present proof of actual and substantial prejudice such that his ability to defend the charges raised against him likely affected the outcome of the proceedings. *People v Crear*, 242 Mich App 158, 166; 618 NW2d 91 (2000). This proof requires more than generalized allegations. *Id.* In the present case, defendant has failed to meet this burden, but merely concludes that prejudice resulted. Accordingly, this claim of error is without merit.

Lastly, defendant argues that appellate counsel was ineffective for failing to raise the issues filed in his supplemental brief in propria persona. We have concluded that these issues are without merit. Therefore, the claim of ineffective assistance also fails.

Affirmed.

/s/ Brian K. Zahra

/s/ Harold Hood

/s/ William B. Murphy