

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EUGENE LUDINGTON,

Defendant-Appellant.

UNPUBLISHED

May 12, 2000

No. 211907

Mecosta Circuit Court

LC No. 97-004041-FH

Before: Gage, P.J., and Meter and Owens, JJ.

PER CURIAM.

In this case involving the break-in of a Michigan convenience store, defendant appeals by right from his conviction by a jury of breaking and entering with the intent to commit larceny, MCL 750.110; MSA 28.305. The trial court, applying a second-offense habitual offender enhancement under MCL 769.10; MSA 28.1082, sentenced him to forty months' to fifteen years' imprisonment. We affirm.

Defendant, who was initially arrested for the instant charge on a fugitive warrant in Indiana, first argues that the prosecutor violated the Interstate Agreement on Detainers ("IAD"), MCL 780.601; MSA 4.147(1), by failing to ensure that defendant, while in Indiana, was advised of his right under the IAD to request a final disposition of the charge against him. Defendant contends that the alleged violation of the IAD entitles him to sentence credit beginning on the day he was arrested in Indiana. This issue involves the interpretation of MCL 780.601; MSA 4.147(1). We review issues of statutory interpretation de novo. *People v Riggs*, 237 Mich App 584, 587; 604 NW2d 68 (1999). We disagree that defendant is entitled to relief, for two separate reasons. First, defendant waived this IAD-based argument by failing to raise it in the trial court. See *People v Browning (On Rehearing)*, 108 Mich App 281, 294; 310 NW2d 365 (1981). Second, the IAD was inapplicable to defendant's situation, since defendant, while in Indiana, was not serving "a term of imprisonment" under the act but was merely awaiting the disposition of pending charges.¹ See MCL 780.601; MSA 4.147(1) and *Browning, supra* at 292. See also *Christian v United States*, 394 A2d 1, 39-41 (DC App, 1978).

Next, defendant argues that the trial court should have excluded the testimony of Robert Ray Rogers, a prosecution witness who testified that defendant told him in August 1996 that he obtained money, cigarettes, and lighters in a break-in of a Michigan gas station. Defendant contends that the

testimony was irrelevant – or, at a minimum, that its probative value was substantially outweighed by its potential for unfair prejudice – because Rogers could not state with specificity when or where the break-in occurred. We review a trial court’s decision to admit evidence for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995). An abuse of discretion occurred if an unprejudiced person, considering the facts on which the trial court acted, would find no justification for the ruling made. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

We find no abuse of discretion on this record. Rogers’ testimony went to a central issue in the case and was therefore relevant. MRE 401. Furthermore, the relevance of the evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403. While, as defendant points out, Rogers could not testify with specificity regarding the time or place of the break-in, that lack of clarity went to the weight of the evidence rather than its admissibility. Defendant additionally suggests that the trial court made no findings regarding the potential prejudice associated with Rogers’ testimony under MRE 403 and that this oversight warrants reversal. We disagree. First, the court’s ruling implicitly recognized that the testimony’s potential for prejudice did not substantially outweigh its probative value. Second, any lack of specific findings under MRE 403 by the trial court was harmless. Indeed, given the highly probative nature of the evidence and its non-inflammatory character, there simply existed no basis for exclusion under MRE 403; any specific “findings” by the trial court regarding prejudice would not have changed this result.

Finally, defendant argues that the trial court imposed a disproportionately long sentence. We review a trial court’s sentencing decision for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). A sentence constitutes an abuse of discretion if it violates the principle of proportionality, which mandates that a sentence be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.*; *People v Paquette*, 214 Mich App 336, 344-345; 543 NW2d 342 (1995). The offense in this case was serious. The damage done to the interior and exterior of the affected store was substantial, a safe had been opened, and the value of the items taken from the store was significant. Furthermore, defendant, aged twenty-three at the time of the crime, had a prior conviction for breaking and entering, the sentence for which was apparently completed less than four months before the instant offense took place. Under these circumstances, we conclude that defendant’s sentence was proportionate and did not constitute an abuse of discretion.

Defendant additionally suggests that the trial court erred by considering only punishment and the protection of society – and not deterrence or, more significantly, rehabilitation – when sentencing defendant. As stated in *People v Adams*, 430 Mich 679, 686; 425 NW2d 437 (1988), a court may properly consider rehabilitation, societal protection, punishment, and deterrence during sentencing. Contrary to defendant’s suggestion, however, there is no requirement that a court explicitly set forth its findings with regard to each of these factors or that a court give great

deference to the goal of rehabilitation when a serious crime has been committed. See *People v Turner*, 123 Mich App 600, 603; 332 NW2d 626 (1983). In light of the proportionality of defendant's sentence, we find no error requiring resentencing.

Affirmed.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Daniel S. Owens

¹ On a related topic, we note that defendant moved below for a personal recognizance bond ("PR bond") under MCR 6.004(C), which protects a defendant's constitutional right to a speedy trial by requiring that a defendant who has been incarcerated for over six months for a felony be given a PR bond. Defendant contended that the six-month period under MCR 6.004(C) should have been computed starting on August 5, 1997, when he was arrested in Indiana on Indiana charges unrelated to the instant offense and after which he was apparently held for both the Indiana charges and for the instant charge. The trial court ruled that the six-month period commenced on September 2, 1997, when the Indiana authorities released defendant on a PR bond and defendant was transported to Michigan to face the instant charge. Although defendant mentions MCR 6.004(C) in his appellate brief, he does not explicitly argue on appeal that the trial court erred in its application of MCR 6.004(C). For the sake of completeness, however, we note that the trial court's ruling was correct, since defendant's incarceration in Indiana beginning on August 5, 1997, was independently based on *additional, unrelated* charges in Indiana and therefore fell within the exclusions from the six-month period listed in MCR 6.004(C)(1) and (6). We further note that the period during which defendant was *initially* incarcerated in Indiana for the instant offense – April 4, 1997, to June 27, 1997 – was appropriately excluded by the trial court from the six-month computation because (1) defendant did not argue that it should be included, and (2) it resulted from defendant's own resistance to extradition.