

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL JAY KAREUS,

Defendant-Appellant.

UNPUBLISHED

November 30, 2004

No. 249431

Macomb Circuit Court

LC No. 2002-002090-FH

Before: Meter, P.J., and Wilder and Schuette, JJ.

MEMORANDUM.

Defendant appeals as of right from his convictions by a jury of operating a vehicle under the influence of alcoholic liquor, third offense, MCL 257.625, and driving with a suspended license, MCL 257.904. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal concerns the prior convictions that were used to enhance his sentence. MCL 257.625(17) (MCL 257.625[16] at the time of defendant's sentencing) provides that a prior conviction shall be established at sentencing by an abstract of conviction, a copy of the defendant's driving record, or an admission by the defendant. The establishment of prior convictions is merely part of the sentence enhancement scheme, and the statute does not require separate findings of fact or impose trial-type evidentiary burdens. *People v Callon*, 256 Mich App 312, 333; 662 NW2d 501 (2003). "[I]t is incumbent on a defendant to first mount an effective challenge to invoke his right to a hearing on a contested fact at sentencing and, thus, the need for an evidentiary hearing with a finding by the trial court based on a preponderance of the evidence." *Id.*, 334.

Defendant repeatedly asked which of his prior convictions would be considered for the enhancement. However, from the time the information was amended, there was no question which two convictions were being relied on by the prosecutor: the May 17, 1995, 80th District Court conviction and the August 8, 1995, Roscommon District Court conviction.

Defendant never raised an effective challenge to his prior convictions. The two convictions that were to be used had been identified well before sentencing. Defendant did not express why he believed his prior convictions were invalid. Moreover, defendant's driving record was placed before the court. Thus, a proper challenge to defendant's prior convictions would have been futile. *Callon, supra*, 335.

Affirmed.

/s/ Patrick M. Meter

/s/ Kurtis T. Wilder

/s/ Bill Schuette