

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN LEWIS PETERSON,

Defendant-Appellant.

UNPUBLISHED

December 18, 1998

No 205526

Calhoun Circuit Court

LC No. 93-001069 FH

Before: Griffin, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Defendant pleaded guilty to attempted aggravated stalking, MCL 750.92; MSA 28.287 and MCL 750.411i; MSA 28.643(9). Defendant was sentenced to a year in jail, suspended, and five years' probation. As one of the conditions of probation, defendant was not permitted to possess a firearm. In the present case, defendant was found guilty of violating that condition of his probation. The trial court revoked defendant's probation and sentenced him to serve twenty to thirty months in prison. Defendant appeals as of right claiming that the verdict of the trial court is against the great weight of the evidence. We affirm.

Defendant's assertion that the verdict was against the great weight of the evidence was not preserved for appeal. The failure to raise this issue by motion for a new trial waives the issue upon appeal. MCR 2.611(A)(1)(e); *DeGroot v Barber*, 198 Mich App 48, 54; 497 NW2d 530 (1993). However, this Court may consider the issue if failing to do so would result in a miscarriage of justice. *Richmond Twp v Erbes*, 195 Mich App 210, 218; 489 NW2d 504 (1992). The standard for determining whether a verdict is against the great weight of the evidence, to entitle a defendant to a new trial, requires a de novo review of the whole body of proofs. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), overruled on other grounds by *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998).

Defendant first argues that the trial court was predisposed to question the validity of a defense witness, and because of this predisposition, the trial court made its decision without hearing the testimony. We disagree. Upon review of the record, it plainly appears that the witness was allowed to

testify and was cross-examined – thus, the testimony was received by the trier of fact. In addition, in the pronouncement of its verdict, the trial court considered and discussed the testimony of this witness. Rather than the court reaching its decision without hearing the testimony, it appears to us that the court found it to be less than credible. Questions of credibility should be left to the trier of fact to resolve. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

Second, defendant claims, with respect to the possession of a firearm condition in his probation order, that the prosecution had to prove that defendant knew the firearm was in his home. Constructive possession of a firearm is found when the location of the firearm is known to the defendant and the gun is reasonably accessible to the defendant. *People v Williams*, 212 Mich App 607, 609; 538 NW2d 89 (1995). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of an offense. *People v Greenwood*, 209 Mich App 470, 472; 531 NW2d 771 (1995). Eyewitness testimony and the testimony of defendant supports the inference that defendant had knowledge of the firearm. Two witnesses testified to the gun being in plain view underneath defendant's bed. Defendant testified to previously owning guns, and it is unlikely that he would not recognize the gun case, especially in light of its location in plain view. Thus, defendant's knowledge of the firearm can be inferred from the testimony.

Because the trial court's findings were supported by the evidence, there was no miscarriage of justice in the revocation of defendant's probation.

We affirm.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Richard A. Bandstra