

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK ROBERT STRELAU,

Defendant-Appellant.

UNPUBLISHED

February 14, 1997

No. 172509

Oakland Circuit Court

LC No. 93-126156-FH

Before: Griffin, P.J., and McDonald and C. W. Johnson*, JJ.

PER CURIAM.

Defendant entered a plea of no contest to the charge of felonious assault, MCL 750.82; MSA 28.277, on December 2, 1993, and was sentenced to a consecutive sentence of 1 ½ to 4 years' imprisonment, on December 14, 1993, and given 187 days credit for time served.

On appeal defendant claims the court erred in denying his motion to withdraw his plea as untimely and further claims his sentence was not proportionate and also claims he should be resentenced because the court failed to inquire on the record whether he reviewed his presentence report. We affirm.

The record shows defendant had the services of a five court appointed attorneys, two in the trial court and three at the appellate level. A claim of appeal was filed on January 11, 1994, and the transcript on February 9, 1994. The first and second appellate attorneys did not file timely post convictions motions. The appointment of the third appellate counsel does not revive the right to file a motion to withdraw a plea under MCR 7.208(B)(1) as provided under MCR 7.212(A)(1)(a)(iii) under the facts of this case. We agree with the trial court's finding that the defendant should not benefit from his unwillingness to cooperate with counsel. Moreover, defendant was not prejudiced by the denial of his motion. The trial court was not required to advise the defendant at his plea as to the consecutive nature of the possible sentence. *People v Brooks*, 135 Mich App 193; 353 NW2d 118 (1984).

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

We further find no abuse of discretion in the court's sentence because it was proportionate to the offender's history and circumstances surrounding the offense and within the sentencing guidelines. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v Fisher*, 442 Mich 560; 503 NW2d 50 (1993).

Finally, defendant's argument that he is entitled to resentencing because the record does not show defendant personally reviewed the presentence report prior to sentencing must also fail. By raising this argument for the first time of appeal, it is not preserved for review. *People v Rodriguez*, 192 Mich App 1; 480 NW2d 287 (1991). At the time of sentencing defendant's counsel acknowledged receiving the report and verified its accuracy. On appeal defendant does not claim it was inaccurate or that he was prejudiced in any way. Although MCR 6.425(D)(2) was not technically complied with, the defendant's sentence was based upon accurate information and resentencing would serve no useful purpose.

Affirmed.

/s/ Richard Allen Griffin
/s/ Gary R. McDonald
/s/ Charles W. Johnson