

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDWARD MASON,

Defendant-Appellant.

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UNPUBLISHED

February 28, 1997

No. 194225

Oakland Circuit Court

LC No. 94-132641-FH

Before: MacKenzie, P.J., and Holbrook, Jr., and T. P. Pickard\*, JJ.

PER CURIAM.

Defendant pleaded no contest to forgery, MCL 750.248; MSA 28.445, uttering and publishing, MCL 750.249; MSA 28.446, and stealing or retaining a financial transaction device without consent, MCL 750.157n(1); MSA 28.354(14)(1). He also pleaded guilty to being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. Defendant appeals as of right. We affirm.

Defendant's claims on appeal concern the procedure by which he was sentenced. The record shows that defendant entered his plea and was sentenced at a single proceeding on August 2, 1994. At that proceeding, the court, pursuant to defendant's *Cobbs* plea [*People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993)], pronounced a sentence of two years' probation with the first year to be served in jail for each conviction. The sentences were to be served concurrently with each other and with a sentence previously imposed in an unrelated case.

Defendant served his jail time, but in 1996 it was discovered that a judgment of sentence had never been entered. On March 25, 1996, defendant was sentenced a second time. At this proceeding, the following exchange occurred:

THE DEFENDANT: Okay. I've been sentenced, I've did the sentence. She vacated the three cases and gave me a year running concurrently on my Habitual.

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

[DEFENSE COUNSEL]: See, Mr. Mason thinks he's already been sentenced on this case. I think that's the situation here. I guess the Court doesn't have a record of it, and resentence – or just sentence him again today.

THE COURT: I think he may have been sentenced before as well --

[DEFENSE COUNSEL]: He was.

THE COURT: -- but, apparently, someone's gone through the records and can't seem to locate the appropriate documents....

Defendant was then sentenced on each conviction to one year in jail, but was given 689 days' credit for time served. A judgment of sentence was subsequently entered consistent with the 1996 sentence.

On appeal, defendant first contends that his 1996 sentence was based on inaccurate information, that is, the erroneous belief that he had not already been sentenced. We reject this claim. It is apparent from the sentencing transcript and from the fact that defendant was given 689 days' credit for time served on his one-year sentence that the court was aware that defendant had been previously sentenced and had completed that sentence. The second sentencing proceeding was treated as a mere formality that would serve as the basis for entering a judgment of sentence to close out the case. Defendant is not entitled to relief on this ground.

MCR 6.427(A) provides that a court must date and sign a written judgment of sentence within seven days after sentencing. That was not done after the 1994 proceedings. The proper remedy for this omission appears to be the entry of a judgment of sentence nunc pro tunc. See *Smith v Judge of Recorder's Court of Detroit*, 238 Mich 83, 86; 213 NW 206 (1927); *In re Trombley*, 312 Mich 677; 20 NW2d 769 (1945); *In re Richards*, 150 Mich 421, 426; 114 NW 348 (1907); 2 Gillespie, Michigan Criminal Law & Procedure (1996 rev 2d ed), § 750, pp 863-865. The 1996 proceeding, culminating in the entry of a judgment of sentence that acknowledged the sentence had already been served, was the functional equivalent of a nunc pro tunc order. We therefore decline to set aside defendant's judgment of sentence.

Defendant also contends that the two sentencing proceedings subjected him to successive punishments for the same crime in violation the prohibition against double jeopardy. The contention is without merit. As indicated, the second sentencing was in the nature of a corrective proceeding that took the place of, rather than added to, the original sentencing proceeding. Defendant was fully credited for serving the 1994 sentence and was not ordered to serve more time. There was no double jeopardy violation.

Affirmed.

/s/ Barbara B. MacKenzie  
/s/ Donald E. Holbrook, Jr.  
/s/ Timothy P. Pickard