

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TOBY MONTY REYNOLDS,

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 189801

Genesee Circuit Court

LC No. 94-51457-FH

Before: Taylor, P.J., and McDonald and C. J. Sindt*, JJ.

PER CURIAM.

Pursuant to a plea agreement defendant pleaded guilty to attempted embezzlement by an agent over \$100, MCL 750.174, 750.92; MSA 28.371, 28.287, and was sentenced to a consecutive sentence of 3 to 5 years' imprisonment. On appeal defendant claims the court erred when it failed to give proper credit for time served, the court sentenced defendant on inaccurate information, and the sentence was excessive. We affirm.

The court properly sentenced defendant to a consecutive sentence since this offense was committed while defendant was awaiting trial on another felony charge, MCL 768.76; MSA 28.1030(2). Defendant received credit for 249 days on both sentences. We question whether this double credit was proper but since not raised we decline to address the issue. Defendant was properly denied credit for time spent in "Odyssey House." *People v Whiteside*, 437 Mich 188; 468 NW2d 504 (1991). The 20 days spent in Houston awaiting extradition should be credited toward his sentence in Case No. 189799. *People v Watts*, 186 Mich App 686; 464 NW2d 715 (1991).

Defendant cannot raise on appeal challenges to the accuracy of information in the presentence report which he did not raise at sentencing. *People v Lawrence*, 206 Mich App 378; 522 NW2d 654 (1994). At the sentencing hearing on September 20, 1995, defendant acknowledged reading the presentence report and that everything on the report was correct except he explained he was not on a hunger strike at Odyssey House. He did not eat or drink anything for days because he was depressed

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

for the reason his supervisors refused to continue him on anti-depressant pills. Such an explanation does not require a response from the court.

Moreover, we will not consider on appeal defendant's claim of ineffective assistance of counsel for failure to raise certain inaccuracies in the presentence report when defendant specifically acknowledged the report was accurate at sentencing with the exception of his explanation of his refusal to eat at Odyssey House.

We further conclude the trial court did not abuse its discretion when sentencing the defendant because it was proportionate to circumstances surrounding the offense and the defendant's history. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The court's upward departure from the guidelines was based on defendant's failure to complete community placement; his fleeing the jurisdiction of the court and his need for a more structured environment so he could receive adequate drug and mental health counseling.

Defendant's remaining claims are moot in light of our resolution of the issues discussed herein.

Affirmed.

/s/ Clifford W. Taylor
/s/ Gary R. McDonald
/s/ Conrad J. Sindt