

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK JOHN VANVALKENBURG,

Defendant-Appellant.

UNPUBLISHED

March 25, 1997

No. 188706

Eaton Circuit Court

LC No. 94-020322-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to operating a motor vehicle while under the influence of liquor, third offense, MCL 257.625(6)(d); MSA 9.2325(6)(d), and was sentenced to thirty to sixty months' imprisonment. He appeals as of right. We affirm in part and remand for further proceedings. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant first argues that his sentence is disproportionate. Defendant was observed driving on the shoulder of the road between two school buses and continued to swerve between the center line and the shoulder of the road. When asked to exit his vehicle, defendant was so intoxicated that he could not even stand without leaning on his car. Defendant refused blood tests at the scene, but subsequent blood tests revealed a blood-alcohol level over three times the legal limit. Defendant was out on bond for another drunk driving offense at the time of the instant offense. Also, in exchange for the plea, the prosecutor agreed to dismiss a charge of driving while on suspended or revoked license. Accordingly, we find that defendant's sentence is proportionate to the seriousness of the circumstances surrounding the offense and offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Defendant also argues that he is entitled to credit for 283 days in jail rather than the 240 days credit he received. This issue is moot where an amended Judgment of Sentence reflects that defendant already received credit for the 283 days in jail. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Finally, defendant argues that he is entitled to have the presentence report corrected to reflect that he was not on probation when he was convicted of the November 17, 1990, drunk driving offense since the trial court agreed to make that correction. We agree that the information should have been stricken. MCR 6.425(D)(3)(a). Accordingly, remand is also necessary for the information to be stricken from the presentence report. *People v Martinez (After Remand)*, 210 Mich App 199, 203; 532 NW2d 863 (1995). A corrected copy of the report is to be transmitted to the Department of Corrections. *Id.*

Affirmed in part and remanded in part for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Daniel F. Walsh
/s/ Robert P. Griffin
/s/ Walter P. Cynar