

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COURTNEY FRIAR,

Defendant-Appellant.

UNPUBLISHED

May 23, 1997

No. 191811

Recorder's Court

LC No. 94-013780

Before: Cavanagh, P.J., and Gage and D.A. Burrell,* JJ.

PER CURIAM.

Defendant pleaded guilty to assault with intent to rob armed, MCL 750.89; MSA 28.284, and unlawful driving away an automobile, MCL 750.413; MSA 28.645, and was sentenced to concurrent terms of six to fifteen years' imprisonment and one to five years' imprisonment. He now appeals as of right, and we affirm.

Defendant argues that he is entitled to be resentenced because the trial court interrupted his allocution and did not allow him to continue. MCR 6.425(D)(2)(c) requires that the trial court give a defendant the opportunity at sentencing to advise the court of any circumstances he believes the court should consider in imposing sentence. The court "must specifically ask the defendant separately if he wishes to address the court." *People v Lugo*, 214 Mich App 699, 711-712; 542 NW2d 921 (1995).

The trial court did give defendant an opportunity to speak at his sentencing but interrupted him because defendant did not express remorse for his part in the crime in his first sentence of allocution. While we are not persuaded that it is fiscally sound or necessarily in defendant's best interest to remand for allocution, we do so because the court rule requires it. On remand, the trial court shall give defendant his full opportunity to address the court before he is sentenced.

Defendant also argues that the trial court abused its discretion in sentencing defendant because the court initially stated during the sentencing hearing that defendant would be sentenced at the low end of the guidelines range of thirty six to ninety six months but then gave a higher sentence. However, the sentence defendant received was well within the guidelines range, and is therefore presumptively

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

proportionate to the offense and the offender. *People v Cutchall*, 200 Mich App 396, 410; 504 NW2d 666 (1993).

Unless the defendant affirmatively waives this relief, the matter is remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage

/s/ Daniel A. Burrell