

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERMAINE DALE FIELDS,

Defendant-Appellant.

UNPUBLISHED

June 3, 1997

No. 186853

Genesee Circuit Court

LC No. 94-050665-FH

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

MEMORANDUM.

Defendant pleaded guilty to violating probation on his underlying conviction of receiving or concealing stolen property over \$100, MCL 750.535; MSA 28.803, and was sentenced to three to five years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant's sentence does not violate the principle of proportionality considering the circumstances surrounding the underlying offense, the probation violation, and the offender. *People v Milbourn*, 435 Mich 630, 651; 461 NW2d 1 (1990); *People v Cotton*, 209 Mich App 82, 84-85; 530 NW2d 495 (1995).

As to defendant's claim that he was prejudiced by the sentencing court's failure to indicate at the sentencing hearing that he would be required to pay restitution, defendant failed to raise this issue below; hence, it is not preserved for appellate review. *People v Stacy*, 193 Mich App 19, 28; 484 NW2d 675 (1992). In any event, we cannot see how defendant could have been prejudiced. Restitution was part of the Order of Probation. Defendant was therefore well aware that he would be

*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.

required to pay restitution in this matter. Defendant does not claim that he is financially unable to pay restitution or that for some reason he should not be required to pay restitution.

Lastly, defendant is not entitled to sentencing credit for the time spent in the New Paths drug treatment program. *People v Scott*, 216 Mich App 196; 548 NW2d 678 (1996).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar