

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH LENEAR DRAKE, a/ka/ KENNETH  
LANEAR DRAKE,

Defendant-Appellant.

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UNPUBLISHED  
December 2, 1997

No. 199771  
Berrien Circuit Court  
LC No. 93-000497 FH

Before: McDonald, P.J., and Wahls and J. R. Weber\*, JJ.

MEMORANDUM.

Defendant appeals by right his 16 to 24 month sentence, imposed following adjudication of probation violation based on an underlying offense of use of cocaine, MCL 333.7404; MSA 14.15(7404). This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends only that his sentence is disproportionate to the offense and the offender. Sentence was imposed June 28, 1996, at which time defendant was given 392 days' credit for time already served. Accordingly, defendant's minimum sentence has long since been served, rendering his proportionality issue moot. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Dismissed as moot.

/s/ Gary R. McDonald  
/s/ Myron H. Wahls  
/s/ John R. Weber

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