

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY LYNN BROWN,

Defendant-Appellant.

---

UNPUBLISHED

January 6, 1998

No. 187355

Jackson Circuit Court

LC No. 95-071708 FH

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

MEMORANDUM.

On plea of guilty, defendant was convicted of breaking and entering and of being a third offender, receiving an enhanced sentence of 8 to 20 years' imprisonment. On this appeal of right, he contends that he is entitled to resentencing because information that he may have cooperated with police in this matter was not brought to the trial court's attention before sentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant, in arguing that his due process rights have been violated, relies on *People v Hale (After Remand)*, 106 Mich App 306, 308-309; 308 NW2d 174 (1981). *Hale*, however, is clearly distinguishable; in that case, the error was of constitutional dimension because the prosecutor had informed the court at sentencing that the defendant had not cooperated with police, while the police, in the person of the officer in charge of the case, had assured defendant that it would make known his cooperation if asked. The government was thus complicit both in breaching a promise and in misrepresenting the facts at sentencing.

Here, defendant and defense counsel were given ample opportunity to allocute at sentencing, and had the chance to advise the court of any matters they wished the court to consider in imposing sentence, and to challenge the presentence report in any respect. Their failure to do so cannot be blamed on the prosecution and does not represent any kind of due process violation, nor can it be said that the resulting sentence is based on inaccurate information. Under these circumstances, defendant's

---

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

sentence was valid and resentencing is precluded. *People v Mitchell*, 454 Mich 145, 176; 560 NW2d 600 (1997).

To the extent defendant's argument might be seen as a claim of ineffective assistance of trial counsel, we reject it. At a hearing on remand, trial counsel indicated he was not certain whether or to what extent defendant had cooperated with police, and defendant failed to introduce evidence that his cooperation was of such significance that no minimally competent criminal defense practitioner would have failed to recognize this as a factor in mitigation to be brought to the trial court's attention. Additionally, defendant has failed to show that he was prejudiced by any such omission, i.e., that the sentencing judge would necessarily have imposed a more lenient sentence had any such facts been brought to its attention. Accordingly, defendant is not entitled to appellate relief on this theory. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Affirmed.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber