

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK JAMES ERVIN,

Defendant-Appellant.

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UNPUBLISHED

April 30, 1999

No. 209719

Berrien Circuit Court

LC No. 97-406525 FH

Before: Kelly, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant pleaded guilty to breaking and entering a building with the intent to commit larceny, MCL 750.110; MSA 28.305, and was sentenced to three to ten years' imprisonment, to be served consecutively to any sentence defendant was then serving as a result of his parolee status. Defendant appeals by leave. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant is not entitled to resentencing. The record reveals that the trial court was aware of the sentencing guidelines' range. Although the court failed to speak the magic words "I am departing from the sentencing guidelines' recommendation," the failure constitutes harmless error. *People v Kreger*, 214 Mich App 549, 554-555; 543 NW2d 55 (1995). The "key test" of sentence proportionality is not whether the sentence imposed departs from or adheres to the guidelines' recommended range, but whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Here, defendant's sentence is proportionate to the circumstances of the offense and offender and the trial court adequately explained its reasons for imposing the sentence it did. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990); *Kreger, supra*. We decline to remand so that the trial court might

complete a sentencing information report departure form as that task would constitute a waste of judicial resources. *Kreger, supra*.

Affirmed.

/s/ Michael J. Kelly

/s/ Janet T. Neff

/s/ Michael R. Smolenski