STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

        Plaintiff-Appellant,

v

JAMES KEITH FLORES,

        Defendant-Appellant.

UNPUBLISHED
July 30, 1999

No. 206287
Recorder's Court
LC No. 96-503305

Before: White, P.J., and Markey and Wilder, JJ.

MEMORANDUM.

Plaintiff appeals by right the sentence of probation imposed following defendant's conviction of criminal sexual conduct in the third degree, MCL 750.520d; MSA 28.788(4). We vacate the sentence and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Following a bench trial, defendant was convicted of criminal sexual conduct in the third degree. The trial court sentenced defendant to four years' probation, with the first year in jail.

We vacate defendant's sentence as invalid and remand for resentencing. A sentence is invalid when it exceeds statutory limits, it is based on constitutionally impermissible grounds, improper assumptions of guilt, inaccurate information, or a misconception of law, or it conforms to local sentencing policy rather than individualized facts. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). A defendant convicted of criminal sexual conduct in the third degree cannot be sentenced to probation. MCL 771.1(1); MSA 28.1131(1); *People v Frank*, 155 Mich App 789, 791; 400 NW2d 718 (1986). The sentence of probation, with its condition that defendant spend one year in jail, was invalid in its entirety. Defendant must be resentenced to an indeterminate prison term with the maximum sentence being fifteen years. MCL 750.520d(2); MSA 28.788(4)(2); MCL 769.8(1); MSA 28.1080(1); *Frank*, *supra*. Defendant is to receive credit for time served under the invalid sentence. *People v Hill (After Remand)*, 202 Mich App 520, 524; 509 NW2d 856 (1993).

Defendant's sentence is vacated, and this case is remanded to the trial court for resentencing consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Jane E. Markey
/s/ Kurtis T. Wilder