

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY WALLACE, a/k/a JOHN WOODS,

Defendant-Appellant.

UNPUBLISHED

February 15, 2000

No. 211329

Wayne Circuit Court

LC No. 97-006371

Before: O'Connell, P.J., and Meter and Timothy G. Hicks*, JJ.

MEMORANDUM.

Defendant appeals as of right from his conviction, following a bench trial, of receiving and concealing stolen property, MCL 750.535; MSA 28.803. Defendant was sentenced to one to five years' imprisonment as a fourth-offense habitual offender under MCL 769.12; MSA 28.1084. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant essentially argues that he was deprived of due process of law because the trial court improperly enhanced his sentence on the mistaken belief that leniency was available from the Department of Corrections. We disagree. In sentencing defendant, the court noted that future leniency might be appropriate, depending upon defendant's continued good behavior, but that this was a matter for the Department of Corrections to decide. There was no indication, however, that the court improperly enhanced defendant's sentence based on the possibility of such leniency. See *People v Fleming*, 428 Mich 408, 421-427; 410 NW2d 266 (1987), and *People v Miller*, 206 Mich App 638, 642-643; 522 NW2d 697 (1994). Indeed, we note that despite defendant's extensive prior record, the court sentenced defendant at the low end of the guidelines for the underlying receiving and concealing charge. The court explicitly found that there was no basis for going under the guidelines.

While it is true that defendant was ultimately sentenced as an habitual offender, for which no disciplinary credits are available, the trial court, as stated above, gave no indication that it was enhancing defendant's sentence because of the possibility of disciplinary credits. The court merely stated that any

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

leniency in the future, based on continued good behavior by defendant, was in the hands of the Department of Corrections. This statement was accurate.

Moreover, defendant has already served his minimum term and has been denied parole. Any challenge to defendant's minimum sentence is therefore moot, since relief is now unavailable. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Affirmed.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks