

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS WARREN,

Defendant-Appellant.

UNPUBLISHED

May 2, 2000

No. 222860

Wayne Circuit Court

LC No. 99-004545

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

MEMORANDUM.

Defendant appeals by delayed leave granted his guilty plea-based conviction for first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty as charged. Although there was no sentence agreement, at the plea proceeding, the court indicated that it would be inclined to sentence defendant at the bottom of the guidelines, which were preliminarily scored at 36 to 60 months. Before sentencing the guidelines were rescored based on additional prior convictions to 84 to 140 months. Defense counsel conceded that the guidelines scoring was accurate and requested a sentence below the guidelines. The court sentenced defendant at the bottom of the guidelines to 7 to 20 years' imprisonment.

On appeal, defendant argues that the court erred in failing to give him an opportunity to withdraw his plea when it failed to follow the initial sentencing evaluation. Defendant did not move to withdraw his plea. Although there was no formal sentence evaluation under *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), the court did indicate that it would sentence defendant at the low end of the guidelines. Although the guidelines scoring was changed, the court followed its evaluation and sentenced defendant at the low end of the guidelines. Defendant would not have been entitled to withdraw his plea, even if he had made the proper motion. *People v Eloby (After Remand)*, 215 Mich App 472; 547 NW2d 48 (1996).

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski