

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD MCFERRIN,

Defendant-Appellant.

UNPUBLISHED

January 30, 2001

No. 218812

Oakland Circuit Court

LC No. 98-162199-FH

Before: Collins, P.J., and Doctoroff and White, JJ.

MEMORANDUM.

Defendant appeals as of right from a jury conviction of attempted arson, MCL 750.72; MSA 28.267; MCL 750.92; MSA 28.287, for which he was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to three and a half to twenty years in prison. We affirm.

A defendant has a constitutional right to the assistance of counsel at sentencing. *People v Miles*, 454 Mich 90, 99; 559 NW2d 299 (1997). Defendant's sole claim on appeal is that this right was violated. Counsel was present and both she and defendant addressed the court prior to the imposition of sentence. The court imposed a sentence of six to twenty years'. While defendant was still in the courtroom but after defense counsel left, the judge stated that he had misread his notes and had intended to impose a lighter sentence. He then amended the minimum sentence to three and a half years'.

Defendant failed to preserve this issue by raising it below and thus review is precluded unless he demonstrates plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Even assuming that the court's modification of the sentence in counsel's absence constituted a technical violation of defendant's right to counsel, defendant has not shown that he was prejudiced by the error. As the amended sentence was lower than that originally stated, it only benefited defendant who does not dispute the validity or propriety of the sentence. Therefore, defendant has failed to establish a right to relief. *Id.*

We reject the prosecutor's argument that the court lacked authority to modify the sentence. The court "may not modify a valid sentence after it has been imposed except as provided by law." MCR 6.429(A). The court does not lose its authority to modify a sentence until the defendant has been remanded to the jail to await execution of the sentence or until the

judgment of sentence has been entered. *People v Bingaman*, 144 Mich App 152, 158-159; 375 NW2d 370 (1984). Because defendant had not left the courtroom and a judgment had not been prepared when the court announced its intention to modify the sentence, the modification was not improper. *Id.*

Affirmed.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White