

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK L. WALTON,

Defendant-Appellant.

UNPUBLISHED

August 10, 2001

No. 219702

Wayne Circuit Court

LC No. 98-010861

Before: Gage, P.J., and Fitzgerald and Markey, JJ.

GAGE, J. (concurring)

I agree that the majority properly upheld defendant's conviction, and correctly rejected defendant's allegations of insufficient evidence to support his conviction, evidentiary and instructional error, prosecutorial misconduct and ineffective assistance of counsel. I write separately, however, to note my disagreement with the majority's resolution of the resentencing issue.

I wholeheartedly agree with this Court's observation in *People v Mapp*, 224 Mich App 431, 434; 569 NW2d 523 (1997), that, absent some demonstration by defendant that the trial court's instant sentence was disproportionate, the trial court should have been able to ministerially correct defendant's judgment of sentence to reflect the requirement that defendant serve the sentence imposed consecutively to a preexisting term of probation that he violated. Because any resentencing by the trial court in this case would involve no revisitation of a discretionary sentencing decision that would benefit from appearances by and arguments from defendant and defense counsel, but merely an administrative correction to reflect a mandatory statutory provision,¹ I deem a resentencing hearing under these circumstances a horrible waste of the court's time and energy.²

¹ See MCL 768.7a(2), which provides that a person convicted of a felony "committed while the person was on parole from a sentence for a previous offense" must serve "the term of imprisonment imposed for the later offense . . . at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense."

² I also agree with this Court's observation in *Mapp* that "the Court in [*People v Thomas*, 223 Mich App 9, 13-14; 566 NW2d 13 (1997)] erred in relying in part on the fact that consecutive
(continued...)

Although the analysis of *People v Thomas*, 223 Mich App 9; 566 NW2d 13 (1997), governs the result in this case according to MCR 7.215(I)(1), I must note my objection to the shameful waste of judicial resources occasioned by applying *Thomas* in this case.³

/s/ Hilda R. Gage

(...continued)

sentences effectively increased the minimum sentence that the defendant would have to serve.”

³ Based on my experience as a trial judge, I further note that the required resentencing inconveniences not only the trial court but the prisoner himself. The prisoner is not only inconvenienced by the intrusion of a resentencing procedure, but also experiences disruption of his rehabilitation process and setbacks in his opportunities to participate in various correctional programs.