

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY ALVIN FETTE,

Defendant-Appellant.

---

UNPUBLISHED

March 4, 1997

No. 175026

St. Clair Circuit

LC Nos. 93-002686-FH;

94-000659-FH

Before: Michael J. Kelly, P.J., and Smolenski and W.J. Giovan,\* JJ.

MEMORANDUM.

Defendant pleaded guilty to two counts of operating a motor vehicle while under the influence of liquor, third offense, MCL 257.625(6); MSA 9.2325(6), and one count of operating a motor vehicle while under the influence of liquor, second offense, MCL 257.625(6); MSA 9.2325(6). He was sentenced to consecutive terms of two to five years' imprisonment for the OUIL-3rd convictions, plus a concurrent term of one year in jail on the OUIL-2nd conviction. He appeals as of right, challenging only his conviction and consecutive sentence for OUIL-3rd in LC No. 94-000659-FH. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court did not err in denying defendant's motion to withdraw his pleas. Although the court did not give defendant an opportunity to withdraw his guilty pleas after determining that it would not adopt the sentence recommendation proposed by the prosecutor, as required by MCR 6.302(C)(3) and *People v Killebrew*, 416 Mich 189, 206-212; 330 NW2d 834 (1982), a review of the record reveals that defendant voluntarily and knowingly waived his right to move to withdraw the pleas if the sentencing recommendation was not followed. *People v Rodriquez*, 192 Mich App 1, 5-6; 480 NW2d 287 (1991). Hence, the trial court did not err in denying defendant's motion to withdraw his guilty pleas.

---

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

Moreover, our review of the record reveals that defendant's sentence for OUIL-3rd in LC No. 94-000659-FH, which was ordered to be served consecutive to the two-year minimum sentence imposed in LC No. 93-002686-FH, was not improperly based in part on the potential early release of defendant due to prison overcrowding. Although such a consideration may not be used to enhance a defendant's sentence, *People v Fleming*, 428 Mich 408; 410 NW2d 266 (1987), our review reveals that prison overcrowding was not a consideration in sentencing in LC No. 94-000659-FH. Hence, resentencing is not required.

Affirmed.

/s/ Michael J. Kelly  
/s/ Michael R. Smolenski  
/s/ William J. Giovan