

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER PHILLIP WALDRON,

Defendant-Appellant.

UNPUBLISHED

March 25, 1997

No. 186928

Montcalm Circuit Court

LC Nos. 94-000N15-FH;

94-000N16-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty in lower court no. 94-000N15-FH to attempted assault with intent to commit criminal sexual conduct involving penetration, MCL 750.92; MSA 28.287 and MCL 750.520g(1); MSA 28.788(7)(1). Defendant pleaded guilty in lower court no. 94-000N16-FH to larceny over \$100, MCL 750.356; MSA 28.588. He was sentenced in both cases to three years' probation, with one condition being that he serve 360 days in jail. Defendant's probation was thereafter revoked and he was sentenced to concurrent terms of three to five years' imprisonment. Defendant appeals as of right. We affirm the convictions and sentences, but modify the sentence credit in lower court no. 94-000N15-FH. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant is not entitled to resentencing. *In re Dana Jenkins*, 438 Mich 364, 369 n 3; 475 NW2d 279 (1991). The sentencing guidelines' recommended sentence range of twelve to twenty-four months for the attempted assault conviction may only be utilized as a starting point in determining an appropriate sentence on the probation violation. *People v Smith*, 195 Mich App 147; 489 NW2d

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

135 (1992); *People v Peters*, 191 Mich App 159; 477 NW2d 479 (1991). Given the circumstances of the underlying offense, defendant's background, the terms of the plea agreement and defendant's conduct while on probation, the trial court imposed a proportionate sentence. *People v Merriweather*, 447 Mich 799, 806; 527 NW2d 460 (1994); *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), *Smith, supra*; *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990). Because we are affirming the sentence in lower court no. 94-000N15-FH, it is not necessary to decide if the sentence in lower court no. 94-000N16-FH is disproportionate. A finding that this sentence is disproportionate would not afford defendant any relief. *People v Sharp*, 192 Mich App 501, 506; 481 NW2d 773 (1992).

Defendant has also failed to demonstrate any basis for resentencing under the standard for unpreserved plain error in *People v Grant*, 445 Mich 535; 520 NW2d 123 (1994). The transcript of the May 12, 1995 sentencing hearing reveals that a supplemental report containing a new recommendation was prepared by a probation officer and addressed at sentencing. *People v Martinez (After Remand)*, 210 Mich App 199, 202; 532 NW2d 863 (1995).

However, we agree with defendant's argument that the amended judgment of sentence dated May 12, 1995, in lower court no. 94-000N15-FH should be amended for the 360 days of credit applicable to both cases. Pursuant to MCR 7.216(A)(1) and (7), we order that defendant's judgment of sentence in lower court no. 94-000N15-FH be amended to reflect 360 days of jail credit. See *People v Resler*, 210 Mich App 24, 28; 532 NW2d 907 (1995).

Affirmed as modified.

/s/ Daniel F. Walsh
/s/ Robert P. Griffin
/s/ Walter P. Cynar