

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID EARL COBURN,

Defendant-Appellant.

UNPUBLISHED

July 8, 1997

No. 191425

Genesee Circuit Court

LC No. 93-048784 FH

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Following this Court's remand for resentencing in Docket No. 168715, defendant, after resentencing, again appeals by right.

Defendant first contends that his five to ten year sentence exceeds the guideline range, which was calculated at two to six years. Defendant fails to understand that the guideline range refers only to the minimum sentence, the maximum being fixed by statute. Defendant's five year minimum sentence is within the guideline range of two to six years, and accordingly defendant did not receive a departure sentence.

Defendant's remaining argument is that the trial court may have relied on inaccurate information in imposing sentence. The presentence report reflects that defendant's criminal history includes another larceny from a person conviction in Michigan, a Minnesota conviction arising from the nonfatal strangulation, stabbing and attempted rape of his ex-wife, and a Michigan conviction for prison escape, as well as the present larceny from a person conviction. While incarcerated on this offense, defendant accumulated 20 major misconduct infractions of prison rules, only the last of which did defense counsel, at the resentencing proceeding, seek to clarify. The presentence report indicated that defendant had been charged with inciting a riot, while counsel suggested that, after hearing, it was only established that defendant participated in the riot but had not incited it. In imposing the same five year minimum sentence it had previously imposed, the trial court commented that defendant's institutional record did not warrant a lesser sentence.

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

This record makes clear that the trial judge did not rely on any possible inaccuracy regarding the 20th misconduct ticket to increase or otherwise adversely affect defendant's sentence. Furthermore, in light of the fact that defendant admitted 19 other major misconduct offenses, not to mention his egregious criminal record, even if the trial court harbored some misunderstanding of the misconduct ticket concerning the riot at the Adrian Regional Facility, any such factual error was not so "extensively and materially false" as to cognizably taint defendant's sentence and provide a basis for appellate relief on due process grounds. *People v Mitchell*, 454 Mich 145, 173; ___ NW2d ___ (1997).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Donald A. Teeple