

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD WHITE, JR.,

Defendant-Appellant.

UNPUBLISHED

March 26, 1999

No. 206001

Genesee Circuit Court

LC No. 94-049930 FH

Before: O'Connell, P.J., and Jansen and Collins, JJ.

PER CURIAM.

Defendant appeals as of right from his plea-based conviction of felonious assault, MCL 750.82; MSA 28.277. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was acquitted by a jury of the original charge of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, but was convicted of the lesser charge of felonious assault. Subsequently, defendant pleaded guilty to habitual offender, fourth offense, MCL 769.12; MSA 28.1084. The court sentenced defendant to ten to fifteen years in prison. Because defendant was on parole at the time he committed the instant offense, he received no jail credit.

Defendant appealed, and in *People v White*, unpublished opinion per curiam of the Court of Appeals, issued April 16, 1996 (Docket No. 177976), we reversed defendant's conviction on the grounds that he had been denied a fair trial when the trial court rebuked him in the presence of the jury.

After various delays in the trial court, defendant pleaded nolo contendere to felonious assault, and acknowledged his prior felony convictions. Defendant entered the plea pursuant to an understanding that the trial court would not enhance his sentence under the habitual offender statute. The trial court sentenced defendant to 32 to 48 months in prison, with credit for 1,123 days.

Initially, defendant argues that he was denied a speedy trial and that the trial court lost jurisdiction by failing to bring him to trial within 180 days, MCL 780.131; MSA 28.969(1), and to arraign him on an amended information. We disagree. A plea of nolo contendere waives issues

concerning speedy trial, *People v Depifanio*, 192 Mich App 257, 258; 480 NW2d 616 (1991), violation of the 180-day rule, *People v Irwin*, 192 Mich App 216, 218; 480 NW2d 611 (1991), and defects in arraignment. *People v Bess*, 11 Mich App 109, 112; 157 NW2d 455 (1968).

Furthermore, we reject defendant's argument that he was denied due process because the trial court's failure to grant him credit against both the sentence in the instant case and his prior sentence resulted in an improper forfeiture of good time credits. This is an issue to be pursued administratively with the Department of Corrections.

Finally, defendant's argument that his sentence was disproportionate fails under either the abuse of discretion standard applicable to habitual offenders, *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997), or the standard proportionality analysis. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). While defendant acknowledged his habitual offender status, the trial court did not enhance his sentence. The sentence was within the guidelines, and thus is presumed to be proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). The factors cited by defendant, i.e., his expression of remorse and his need for substance abuse treatment, do not overcome the presumption that the sentence was proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins