

Court of Appeals, State of Michigan

ORDER

People of MI v Edward Alexander

Docket No. 304995

LC No. 11-000255-FH

Kurtis T. Wilder
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the April 14, 2011, order of the Wayne Circuit Court sentencing defendant to one year in jail and two years of probation hereby is VACATED. The maximum sentence of imprisonment for misdemeanor aggravated assault is one year. MCL 750.81a(1). When defendant has served his one-year sentence, he will have served the maximum period of imprisonment authorized by statute. Where the time served in jail equals or exceeds the maximum period of incarceration for the offense, any additional probation time is invalid. *People v Bisogni*, 132 Mich App 244, 246-247; 347 NW2d 739 (1984). Therefore, defendant's sentence is invalid. Because the agreed-upon sentence under *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), is invalid, defendant has the right to withdraw his plea. *People v Connor*, 209 Mich App 419, 432; 531 NW2d 734 (1995). The Court further observes that the factual basis on the record is insufficient to support defendant's plea of guilty to misdemeanor aggravated assault. Thus, in the event that defendant elects not to withdraw his plea on remand, that defect should be remedied. The case is REMANDED to the circuit court for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

SEP 29 2011

Date


Chief Clerk