

STATE OF MICHIGAN

COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH JOSEPH HERBERT,

Defendant-Appellant.

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UNPUBLISHED

May 3, 1996

No. 183181

LC No. 93-014034

Before: Taylor, P.J., and Fitzgerald and P.D. Houk,\* JJ.

MEMORANDUM.

Pursuant to a plea agreement, defendant pleaded guilty to breaking and entering an occupied dwelling with the intent to commit a larceny, MCL 750.110; MSA 28.305. In consideration of defendant's plea, the prosecutor dismissed an habitual offender, fourth offense, charge. Pursuant to a sentence agreement, the court imposed a sentence of five to fifteen years in prison. Defendant appeals his sentence by delayed leave granted. We affirm.

Defendant first argues that he is entitled to resentencing, even though his sentence was in accordance with the sentence agreement, because the sentencing guidelines were misscored. We disagree.

Initially, we note that defendant's challenge to the scoring of the guidelines is unpreserved as defendant did not challenge the court's scoring at sentencing or as otherwise allowed under MCR 6.429(C). *People v Walker*, 428 Mich 261, 266; 407 NW2d 367 (1987); *People v Rodriguez*, 192 Mich App 1, 5; 480 NW2d 287 (1991). More importantly, a defendant may not challenge a sentence imposed pursuant to a sentencing agreement unless there has been an attempt to withdraw the plea for a sound legal reason. *People v Ward*, 206 Mich App 38, 43-44; 520 NW2d 363 (1994); *People v Cobbs*, 443 Mich 276, 285; 505 NW2d 208 (1993). If the length of defendant's sentence were

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

properly before this Court, we would find it proportionate. *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990).

Defendant also argues that he is entitled to resentencing because the trial court failed to adequately articulate the particular reasons for the sentence imposed. This argument is not supported by the record. In pronouncing sentence, the trial court specifically referred to the plea agreement. It is apparent that the court was referring to the plea/sentence agreement. The trial court's statement minimally satisfied the articulation requirement. *People v Triplett*, 432 Mich 568, 571-572; 442 NW2d 622 (1989); *People v Lawson*, 195 Mich App 76, 78; 489 NW2d 147 (1992); *People v Brown*, 186 Mich App 350, 357-359; 463 NW2d 491 (1990); Cf. *People v Kreger*, 214 Mich App 549, 554; \_\_\_ NW2d \_\_\_ (1995).

Affirmed.

/s/ Clifford W. Taylor

/s/ E. Thomas Fitzgerald

/s/ Peter D. Houk