

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

May 17, 1996

Plaintiff-Appellee,

v

No. 183849

LC No. 94-051272 FH

MANDA LOU HADDIX ,

Defendant-Appellant.

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

Defendant pleaded guilty to perjury for making a false certification to obtain a driver's license, MCL 257.903; MSA 9.2603, and habitual offender, third offense, MCL 769.11; MSA 28.1083. She was sentenced to five to ten years' imprisonment, and now appeals as of right. We affirm defendant's conviction but remand for resentencing. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

There is no merit to defendant's claim that the trial court erred by failing to make final acceptance of the plea bargain contingent upon the completion of a presentence investigation report. The holding in *People v Killebrew*, 416 Mich 189; 330 NW2d 834 (1982), has no application to this case because the plea agreement did not contain a sentence agreement. The trial court also did not err in failing to prepare or consider sentencing guidelines because they were not applicable to the conviction offense. *Michigan Sentencing Guidelines* (2d ed), p 1.

However, because the trial court's maximum sentence exceeded the enhanced statutory maximum by two years, we vacate defendant's sentence and remand for resentencing. *People v*

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

Barkley, 151 Mich App 234, 241; 390 NW2d 705 (1986). Defendant was guilty of a felony under MCL 257.903(1);MSA 9.2603(1), for which punishment is not expressly prescribed. MCL 750.503; MSA 28.771, which governs the punishment of felonies when not fixed by statute, sets the maximum prison sentence at four years. Defendant's conviction of habitual offender, third offense, MCL 769.11; MSA 28.1083, allowed for the doubling of the maximum punishment, resulting in an enhanced statutory maximum of eight years. Because the trial court's maximum sentence exceeded the enhanced statutory maximum by two years, the sentence must be vacated and the case remanded for resentencing. Resentencing should take place before the same judge because reassignment is neither advisable nor necessary to preserve the appearance of justice. *People v Evans*, 156 Mich App 68, 72; 401 NW2d 312 (1986).

Defendant's conviction is affirmed but the case is remanded for resentencing. We do not retain jurisdiction.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.