

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN MICHAEL SCHWANDER,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 184341

LC No. 94-002220-FH

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

MEMORANDUM.

Defendant pleaded guilty to attempted breaking and entering, MCL 750.92; MSA 28.287 and MCL 750.110; MSA 28.305, and was sentenced to thirty to sixty months' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court's misstatement of the guidelines' recommended range was harmless error. Defendant has not challenged the scoring of the guidelines and was sentenced within the guidelines. Before the sentence was imposed, defendant was informed that it would be thirty to sixty months. He was given the opportunity to consult with his attorney and to withdraw his plea if he so desired. Under the circumstances, defendant was not prejudiced by the trial court's misstatement of the guidelines' recommendation. There is no reasonable probability that the error affected the outcome of defendant's sentence. *People v Hubbard*, 209 Mich App 234, 243; 530 NW2d 130 (1995).

Defendant was not denied the effective assistance of counsel. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). Counsel's failure to correct the trial court's misstatement of the

*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.

guidelines' recommendation did not prejudice defendant. The uncounselled prior misdemeanor convictions were not considered in the scoring of the guidelines or by the trial court when it imposed the sentence.

Defendant's sentence does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990); *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987).

The trial court did not err in failing to award credit for jail time as part of the sentence. Because defendant was on parole for a previous conviction when he committed the instant felony, any credit for time served should be applied against the first sentence. *People v Stewart*, 203 Mich App 432, 433-434; 513 NW2d 147 (1994); *People v Watts*, 186 Mich App 686, 687-691; 464 NW2d 715 (1991).

Affirmed.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.