

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTON A. ANDERSON, SR.,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 184932

LC No. 93-127271-FC

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

MEMORANDUM.

Defendant pleaded guilty to violating probation on his underlying convictions of assault with intent to do great bodily harm, MCL 750.84; MSA 28.279, and fourth-degree child abuse, MCL 750.136b(5); MSA 28.331(2)(5). He was sentenced to five to ten years' imprisonment, and now appeals as of right. We remand. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Although a sentencing court is not required to use the guidelines for the underlying offense when sentencing a defendant for a probation violation, the record shows that the trial judge referred to an incorrect sentencing guidelines' range when sentencing defendant. The appropriate remedy is to remand the case so that the trial judge may determine whether the erroneous guidelines' score actually affected his sentencing decision. If the trial judge determines that the inaccurate range affected defendant's sentence, then defendant shall be resentenced. *People v Landis*, 197 Mich App 217; 494 NW2d 865 (1992).

Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.