

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILIP WAYNE THON,

Defendant-Appellant.

UNPUBLISHED

October 1, 1996

No. 186918

LC No. 95-010398-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Pursuant to a plea agreement, defendant pleaded guilty to delivery of marihuana to a minor, MCL 333.7410; MSA 14.15(7410), and was sentenced to sixty-four to ninety-six months' imprisonment. He appeals as of right. We remand for resentencing. This case has been decided without oral argument pursuant to MCR 7.214(A).

Having reviewed the record, we conclude that defendant's sixty-four month minimum sentence violates the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Although defendant's conduct was entirely opprobrious, this is not the rare case in which a defendant convicted of a first offense should receive the maximum minimum sentence. *People v Granderson*, 212 Mich App 673, 680-681; 538 NW2d 471 (1995), lv pending. Accordingly, defendant is entitled to resentencing. At the resentencing hearing, the court shall prepare an updated presentence report and shall give both defendant and his attorney an opportunity to review the same prior to sentencing. MCR 6.425; *People v Triplett*, 407 Mich 510; 287 NW2d 165 (1980).

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

Remanded for resentencing. We do not retain jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan