

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICIA ANN BUTTON,

Defendant-Appellant.

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UNPUBLISHED

October 1, 1996

No. 189217

LC Nos. 93-066721-FH;

95-068681-FH

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

MEMORANDUM.

Defendant pleaded guilty in lower court no. 93-066721-FH to violating probation on her underlying conviction of burning real property, MCL 750.73; MSA 28.268, and was sentenced to three to ten years' imprisonment. She also pleaded guilty in lower court no. 95-068681-FH to burning a dwelling house, MCL 750.72; MSA 28.267, and was sentenced to 301 days in jail. Defendant appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant failed to preserve her challenge to the factual basis of her plea in lower court no. 95-068681-FH because she did not move to withdraw the plea in the trial court. MCR 6.311(C); *People v Beasley*, 198 Mich App 40; 497 NW2d 200 (1993); *People v Allen*, 168 Mich App 77; 423 NW2d 918 (1988).

Defendant waived her challenge to the proportionality of the sentences by not providing this Court with a copy of the presentence report. MCR 7.212(C); *People v Rodriguez*, 212 Mich App 351, 355; 538 NW2d 42 (1995); *People v Oswald*, 208 Mich App 444, 446; 528 NW2d 782 (1995). Even if considered on the merits based on the record before us, we would not order resentencing in lower court no. 93-0066721-FH because defendant has not demonstrated that her

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

sentence is invalid. *In re Dana Jenkins*, 438 Mich 364, 369 n 3; 475 NW2d 279 (1991). Although defendant's individual circumstances made the sentencing decision difficult, the trial court imposed a proportionate sentence. *People v Merriweather*, 447 Mich 799, 806; 527 NW2d 460 (1994); *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v Smith*, 195 Mich App 147; 489 NW2d 135 (1992). Moreover, we find no basis for relief with respect to the jail sentence in lower court no. 95-068681-FH because it has already been served and, in any event, was based on a sentencing agreement. *People v Cobbs*, 443 Mich 276, 285; 505 NW2d 208 (1993); *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994); *People v Blount*, 197 Mich App 174; 494 NW2d 829 (1992).

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan