

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH LEON CALHOUN,

Defendant-Appellant.

UNPUBLISHED

October 4, 1996

No. 187711

LC No. 94-001502-FC

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

MEMORANDUM.

Defendant pleaded nolo contendere to assault with intent to murder, MCL 750.83; MSA 28.278, and was sentenced to seven to fifteen years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

There is no merit to defendant's claim that he was sentenced on the basis of inaccurate information. US Const, Am XIV; Const 1963, art 1, §17; *People v Fleming*, 428 Mich 408, 431; 410 NW2d 266 (1987); *People v Hoyt*, 185 Mich App 531, 533; 462 NW2d 793 (1990). It is clear from the sentencing court's statements prior to imposing the sentence that it would not consider the unsupported information supplied by the prosecution. Rather, the court indicated it would abide by the agreement with defendant to follow the victim's recommendation and impose a sentence at the lowest end of the guidelines' recommended range.

Defendant received the agreed-upon sentence and has not moved to withdraw his plea. Thus, he has waived the right to challenge the proportionality of the sentence on appeal. *People v Blount*, 197 Mich App 174, 175; 494 NW2d 829 (1992).

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

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan