

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL LEE MILES,

Defendant-Appellant.

UNPUBLISHED

October 4, 1996

No. 191530

LC No. 94-002125-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 uttering and publishing, MCL 750.249; MSA 28.446, and was sentenced to five to fourteen years' imprisonment. He subsequently moved for resentencing on the ground that guidelines' offense variables were incorrectly scored. The trial court granted resentencing, but imposed the same sentence of five to fourteen years' imprisonment. Defendant appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

We agree with the prosecution's position that it was unnecessary for the trial court to resentence defendant. Once the trial court determined that the guidelines' scoring error was harmless, it should have affirmed the sentence. See *People v Polus*, 197 Mich App 197, 201-202; 495 NW2d 402 (1992); *People v Dale Williams*, 191 Mich App 269, 279-280; 477 NW2d 877 (1991). In any event, 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 Dukes*, 189 Mich App 262, 266; 471 NW2d 651 (1991). Because defendant has not established that his sentence is disproportionate or otherwise invalid, we affirm the sentence. *In re Dana Jenkins*, 438 Mich 364, 369 n 3; 475 NW2d 279 (1991).

*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