

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH ALLEN RHINEHART,

Defendant-Appellant.

UNPUBLISHED

March 14, 1997

No. 193654

Chippewa Circuit Court

LC No. 90-5473-FH

Before: Taylor, P.J. and McDonald, and C. J. Sindt,* JJ.

PER CURIAM.

Defendant pleaded guilty of taking another person hostage while a prisoner, MCL 750.349a; MSA 28.581(1). Defendant was sentenced on July 21, 1992, to parolable life to be served consecutively to a nonparolable life sentence he was serving for a 1973 felony-murder conviction. In an earlier appeal, this Court affirmed defendant's conviction but remanded for resentencing because the trial court relied upon inaccurate information when it sentenced defendant. Unpublished per curiam opinion issued August 11, 1995, Docket No. 155117. The trial court imposed an identical consecutive¹ parolable life sentence at the resentencing on March 5, 1996. Defendant appeals his resentencing as of right. We affirm.

The judgment of sentence issued after the March 5, 1996, resentencing did not give defendant credit for any time served. Defendant argues that the failure to grant him credit for the period from his July 21, 1992, original sentencing was improper. We disagree.

Initially, we note that defendant will likely never serve the consecutive parolable life sentence that was imposed in this case because he is already serving a nonparolable life sentence for felony murder, i.e., the parolable life sentence is not set to begin until after he dies in prison. In any event, defendant was not entitled to credit for time served under MCL 769.11b; MSA 28.1083(2) because defendant was not incarcerated as a result of being denied or unable to post bond on the charge to which he pleaded guilty, i.e., defendant remained incarcerated because of his felony-murder conviction.

* Circuit judge, sitting on the Court of Appeals by assignment.

People v Whiteside, 437 Mich 188, 196; 468 NW2d 504 (1991). Further, defendant was not entitled to credit for time served under MCL 769.11a; MSA 28.1083(1) because he did not serve any time on the original parolable life sentence, i.e., the sentence never commenced because it was to be served consecutive to the nonparolable life sentence. See also *People v Patterson*, 392 Mich 83, 90; 219 NW2d 31 (1974) (a prisoner is not entitled to any credit for the time he is already obliged to serve under a prior sentence).

Defendant alternatively argues that he is entitled to have the judgment of sentence amended to indicate that the sentence began on July 21, 1992. Defendant asserts that the failure to so indicate will require him to serve over three extra years in maximum security at level five, thus affecting a loss of freedom within the prison system. Thus, even though defendant may never serve the sentence, he claims the failure to have the sentence commence on July 21, 1992, will have an adverse impact on him within the prison system. Defendant argues that the failure to amend the judgment of sentence to reflect that his sentence began on July 21, 1992, would effectively punish defendant for having successfully appealed his original sentence and obtaining a resentencing. The original judgment of sentence in this case indicated a sentencing date of July 21, 1992. This Court then ordered a resentencing. The judgment of sentence issued as a result of the resentencing imposed the same sentence but indicates that the sentencing date was March 5, 1996. However, neither judgment of sentence indicates a commencement date. Indeed, each judgment of sentence shows that the sentence was to be consecutive to the nonparolable life sentence defendant was already serving. Thus, there is no commencement date. See *People v Bettin*, 174 Mich App 473, 474-475; 436 NW2d 669 (1988) (trial court correctly refused to set a commencement date for a consecutive sentence). The trial court in the instant case did nothing improper. The judgment of sentence that was issued after the resentencing correctly lists the date that defendant was resentenced. A commencement date cannot be set because it is unknown when defendant will die in prison as a result of his felony-murder sentence.

Defendant next argues that his consecutive parolable life sentence was disproportionate. Initially, this issue is arguably moot because defendant is already serving a nonparolable life sentence. See *People v Turner*, 213 Mich App 558, 584; 540 NW2d 728 (1995). In any event, we disagree with defendant's claim. A sentence must reflect the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). There are no sentencing guidelines for the instant conviction. Here, defendant, while serving a nonparolable life sentence, held a female prison employee hostage for several hours, holding scissors to her neck, threatening to kill her, tied her hands and sexually molested her. Under such circumstances, we find that the sentence imposed reflected the seriousness of the matter and was proportionate to the offense and the offender. *Id.*; *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Clifford W. Taylor
/s/ Gary R. McDonald
/s/ Conrad J. Sindt

¹ The sentence was required to be consecutive pursuant to MCL 768.7a(1); MSA 28.1030(1).