

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY ALAN VASSAIR,

Defendant-Appellant.

UNPUBLISHED

March 28, 1997

No. 188072

Macomb Circuit Court

LC No. 93-002985-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty of stealing or retaining without consent a financial transaction device, MCL 750.157n; MSA 28.354(14), and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. He was sentenced to two to fifteen years' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court did not err in not giving defendant the opportunity to withdraw his guilty pleas at the time of sentencing when it declined to follow the prosecutor's recommendation on sentencing, pursuant to *People v Killebrew*, 416 Mich 189, 209-210; 330 NW2d 834 (1982). Defendant asked the court to withdraw the prosecutor's recommendation on sentencing at the sentencing hearing, which the prosecutor agreed to do. Accordingly, the trial court did not have before it a recommendation from the prosecutor when it sentenced defendant. The court's failure to sentence in accordance with the sentence recommendation did not require that defendant be given the option of withdrawing his pleas.

Defendant has failed to show that his trial counsel's performance at sentencing was ineffective. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). Defendant has failed to overcome

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

the presumption that his counsel engaged in sound strategy at the time of sentencing when he urged the court to follow the probation department's recommendation on sentencing. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991). Furthermore, defendant has failed to make an adequate offer of proof to justify remanding this matter for an evidentiary hearing. *People v Simmons*, 140 Mich App 681, 685-686; 364 NW2d 783 (1985).

Finally, defendant has also failed to demonstrate error with the trial court's grant of credit for time served on the record at the sentencing hearing, MCR 6.425(D)(2)(d). While defendant made a request for additional credit, there were incomplete facts and law presented to the trial court at the sentencing hearing to allow it to decide if defendant was entitled to additional credit. The court granted defendant the amount of credit that it was certain he was entitled to, and indicated it would reconsider the issue after more information was provided. However, defendant never made a post-judgment motion on the issue to support his position with either new facts or law. Accordingly, defendant has not shown that the amount of credit he was granted was erroneous or that he was entitled to an adjustment to the amount of sentence credit.

Affirmed.

/s/ Daniel F. Walsh
/s/ Robert P. Griffin
/s/ Walter P. Cynar