

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERRICK DWAYNE MCDANIEL,

Defendant-Appellant.

UNPUBLISHED

April 1, 1997

No. 187027

Kent Circuit Court

LC No. 94-003113-FH

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

MEMORANDUM.

Defendant pleaded guilty to larceny in a building, MCL 750.360; MSA 28.592, and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to two to six years' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

At sentencing, defense counsel must be given an opportunity to advise the court of any circumstances counsel believes should be considered in imposing sentence. MCR 6.425(D)(2)(c). The court in this case asked defense counsel if he had any comments regarding the presentence report or challenges to the scoring of the sentencing guidelines. Although better practice would have been for the court to also ask counsel if he had anything else to say before sentencing, its failure to do so did not constitute prejudicial error entitling defendant to resentencing. The case of *People v Theobald*, 117 Mich App 216, 217-219; 323 NW2d 658 (1982), which defendant relies upon, is distinguishable because there defense counsel was afforded no opportunity to make any comment whatsoever.

*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.

Contrary to defendant's assertion, no error resulted from the fact that he was represented by substitute counsel at sentencing.

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar