

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILLIP EZRA SMITH,

Defendant-Appellant.

UNPUBLISHED

April 4, 1997

No. 190438

Livingston Circuit Court

LC No. 89-005759-FH

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

MEMORANDUM.

Defendant pleaded guilty to violating probation on his underlying convictions of false pretenses over \$100, MCL 750.218; MSA 28.415, and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to three to fifteen years' imprisonment, and now appeals as of right. We affirm defendant's convictions and sentence, but remand for correction of the judgment of sentence. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant is not entitled to resentencing because the sentencing court failed to calculate the sentencing guidelines' range for the underlying false pretenses offense. The guidelines do not apply to habitual offender convictions or probation violations. *People v Gatewood*, 450 Mich 1025; ___ NW2d ___ (1996); *People v Cervantes*, 448 Mich 620, 625 (Riley, J.); 630 (Cavanagh, J.); 532 NW2d 831 (1995); *People v Reynolds*, 195 Mich App 182, 184; 489 NW2d 128 (1992).

Additionally, defendant's sentence does not violate the principle of proportionality given defendant's (1) lack of remorse, (2) repeated failure to take responsibility for his actions, (3) repeated

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failure to take advantage of rehabilitative opportunities afforded him, and (4) commission of another criminal offense while on probation. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Finally, we remand the case to the sentencing court for entry of an amended judgment of sentence which credits defendant with 108 days served in the county jail under the terms of the probationary sentence, *People v Sturdivant*, 412 Mich 92, 96-98; 312 NW2d 622 (1981), and with an additional seventy-three days awarded defendant in good time credits, *People v Resler*, 210 Mich App 24, 27-28; 532 NW2d 907 (1995).

Defendant's convictions and sentence are affirmed, but the case is remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar