STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

      Plaintiff-Appellee,

v

JOSEPH MICHAEL SANTOYA,

      Defendant-Appellant.

UNPUBLISHED
May 16, 1997

No. 188689
Antrim Circuit Court
LC No. 94-002826-FH

Before: Holbrook, Jr., P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

Defendant pleaded guilty of malicious destruction of property, MCL 750.377b; MSA 28.609(2), and was sentenced to serve thirty to forty-eight months in prison. Because defendant was on parole at the time he committed the current offense, the court amended the judgment of sentence to reflect that the sentence was to be served consecutive to a sentence he was then serving for armed robbery. On resentencing, the court adopted the recommendation of defense counsel and the prosecutor that defendant be placed on one-year delay of sentence and that, if he had no prison misconduct tickets during that year, he would be sentenced to "time served." When the parties appeared before the court again, the court sentenced defendant to serve 561 days to four years in prison, with credit for time served of 561 days. Defendant appeals.

The trial court did not enforce the specific agreement to sentence defendant to "time served" because it believed that it was not statutorily authorized to impose a determinate sentence for a felony conviction. The court was correct that MCL 769.1 *et seq.*; MSA 28.1072 *et seq.* mandates indeterminate *prison* sentences for felons. However, under the circumstances of this case, we believe that it is appropriate to enforce the specific agreement that the parties and the court agreed to in February 1995. Accordingly, we exercise our authority under MCR 7.216(A)(1), (7) and amend the judgment of sentence *nunc pro tunc* to reflect that defendant was resentenced on August 21, 1995, to serve one year probation with credit for time served of 561 days. See MCL 771.3; MSA 28.1133.

The judgment of sentence is amended as directed above.

/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie
/s/ William B. Murphy