

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HENRI J. PLOVIE,

Defendant-Appellant.

UNPUBLISHED

September 16, 1997

No. 189665

Oakland Circuit Court

LC No. 94-134808-FC

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Originally charged with attempted murder, defendant was convicted of the cognate lesser offense of second degree child abuse following a jury trial. MCL 750.136b(3); MSA 28.331(2)(3). Defendant was then adjudicated a fourth habitual offender, receiving an enhanced seven to fifteen year sentence of imprisonment. Defendant appeals by right; this appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Based on a colloquy which occurred during sentencing, defendant claims that the trial court erred in denying him sentence credit for time served in jail awaiting trial and disposition. The judgment of sentence in the lower court record reflects, however, that defendant received 394 days credit against his minimum and maximum sentences in this case. Accordingly, defendant's first issue is without factual predicate in the record.

Defendant's remaining contention is that his seven to fifteen year sentence is disproportionate to the offense and the offender. As a fourth offender convicted of a felony with a maximum punishment less than five years' imprisonment, defendant could have received a ten to fifteen year sentence, but received only seven to fifteen years' imprisonment. At the time of the offense, defendant was on delayed sentencing status for offenses of felonious assault and malicious destruction of property. The instant offense involved defendant endangering the life of his young child. Accordingly, the seven to fifteen year sentence actually imposed does not represent an abuse of the trial court's sentencing discretion. *People v Hansford (After Remand)*, 454 Mich 320; 562 NW2d 460 (1997).

Affirmed.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski