

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NAYVON HILL,

Defendant-Appellant.

UNPUBLISHED

December 19, 1997

No. 194984

Saginaw Circuit Court

LC No. 93-007788 FH

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

MEMORANDUM.

Defendant was convicted of unarmed robbery, MCL 750.530; MSA 28.798 and resisting and obstructing a police officer, MCL 750.479; MSA 28.747. Defendant was then adjudicated as a fourth offender, MCL 769.12; MSA 28.1084. In defendant's prior appeal as of right, unpublished opinion per curiam of the Court of Appeals, issued 1/30/96 (Docket No. 172424), this Court remanded for resentencing. This appeal as of right arises from the resentencing that occurred on April 12, 1996.

Resentencing was conducted without, as far as the record indicates, preparation of an updated presentence report. The only presentence report transmitted to the Clerk of this Court by the clerk of the circuit court is the one prepared in conjunction with the original sentencing. Furthermore, although the trial court accepted several exhibits offered by the defense at the resentencing, these were not included with the presentence report, and should have been attached thereto for transmittal to the Department of Corrections. Resentencing conducted without the preparation of a reasonably up-to-date presentence report is improper. *People v Triplett*, 407 Mich 510, 514-515; 287 NW2d 165 (1980). Accordingly, this case must be remanded for another resentencing.

In calculating defendant's sentence credit, the trial court must account for the fact that, by statute, defendant's sentence must be consecutive to the prior sentence for which he was on parole at the time of this offense. *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569, 584; 548 NW2d 900 (1996). This construction applies to all persons such as defendant who, while on parole, committed crimes after the effective date of the statute at issue. *People v Doyle*, 451 Mich 93, 103-105; 545 NW2d 627 (1996). Accordingly, to the extent the Parole Board required defendant to serve

any additional portions of his prior sentence, defendant is not entitled to sentence credit against the sentences for the present offenses, because the time served is properly credited to the prior sentence instead. *People v Watts*, 186 Mich App 686, 689-690; 464 NW2d 715 (1991). On remand, however, the trial court must actually calculate the proper sentence credit for the present offenses, as mandated by MCL 769.11b; MSA 28.1083(2). The circuit court may not leave it to other entities or persons to make that determination. *People v Donkers*, 70 Mich App 692; 247 NW2d 330 (1976).

Because of our disposition requiring resentencing, discussion of the proportionality of defendant's enhanced sentences or the propriety of the sentencing judge's articulation is unnecessary.

Reversed and remanded for resentencing. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra