

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TWANNA DAVIS,

Defendant-Appellant.

UNPUBLISHED

February 13, 1998

No. 197206

Recorder's Court

LC No. 96-000863

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

MEMORANDUM.

Following a bench trial, defendant was convicted of unlawfully driving away an automobile, MCL 750.413; MSA 28.645, and assault with intent to rob while armed, MCL 750.89; MSA 28.284. The trial court sentenced defendant to one to four years' imprisonment on the UDAA conviction. The court then apparently imposed a sentence of five to fifteen years' imprisonment on the erroneously held belief that defendant had been convicted of armed robbery. Defendant appeals as of right. We vacate defendant's five to fifteen year sentence and remand for resentencing.

Defendant argues that she is entitled to resentencing because the trial court sentenced her on a nonexistent armed robbery conviction when it should have sentenced her on the assault conviction. A sentence is invalid if based on an improper assumption of guilt or on inaccurate information. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). A review of the sentencing transcript reveals that the court was under the mistaken belief that it was sentencing defendant on an armed robbery conviction. Accordingly, defendant is entitled to sentencing on the assault conviction.

We decline to address defendant's challenge to the proportionality of her five year minimum sentence in light of the remand for resentencing.

Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski

