

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUFUS LEE WASHINGTON,

Defendant-Appellant.

UNPUBLISHED

May 5, 1998

No. 200969

Genesee Circuit Court

LC No. 90-043388 FC

Before: Neff, P.J., and White and D. A. Teeple,* JJ

MEMORANDUM.

Defendant appeals as of right from the sentence imposed on his habitual offender conviction on resentencing after remand. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted by a jury of second-degree criminal sexual conduct, MCL 750.520c; MSA 29.788(3), involving his girlfriend's nine year old daughter. He then pleaded guilty to being a fourth felony habitual offender, MCL 769.12; MSA 28.1084. Defendant was originally sentenced to a term of twenty to thirty years' imprisonment, with 254 days credit for time served. In his initial appeal, this Court affirmed defendant's convictions, but remanded for resentencing in an unpublished opinion. (Docket No. 141419, issued 4/10/95). The Court remanded to the trial court for scoring of the SIR, resolution of challenges to the presentence information report, and resentencing.

At resentencing, the trial court reduced defendant's sentence to 17 to 30 years' imprisonment. However, the court also modified the credit for time served to apply to previous sentences because defendant was on parole at the time the instant offense was committed.

Defendant argues that the change in his sentence credit violates the prohibition against double jeopardy. We disagree. Defendant was not entitled to the sentence credit where he committed the instant offense while he was on parole. MCL 768.7a(2); MSA 28.1030(1)(2); *People v Brown*, 186 Mich App 350, 359; 463 NW2d 491 (1990). Defendant has been given full credit for the time served

* Circuit judge, sitting on the Court of Appeals by assignment.

on his original sentence, which was set aside in the initial appeal. *People v Lyons (After Remand)*, 222 Mich App 319, 321; 564 NW2d 114 (1997). The court adjusted the application of the sentence credit to reflect the statutory requirement. Defendant will continue to receive credit for time served, but it will be applied to his previous sentence. There is no showing of a vindictive increase in the sentence, where the trial court simultaneously reduced defendant's minimum sentence.

There is no showing that the sentence is disproportionate. The trial court properly reflected on defendant's age in noting his prior record, and the fact that he was no longer an impetuous youth. *People v Fleming*, 428 Mich 408, 423-424, n 17; 410 NW2d 266 (1987). The sentence was based on defendant's prior criminal history, the seriousness of the crime and its effect on the young victim. The trial court did not abuse its sentencing discretion. *People v McCoy*, 223 Mich App 500; 566 NW2d 667 (1997).

Affirmed.

/s/ Janet T. Neff
/s/ Helene N. White
/s/ Donald A. Teeple