

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BILLY THOMPSON,

Defendant-Appellant.

UNPUBLISHED

June 27, 1997

No. 186904

Saginaw Circuit Court

LC No. 94-9146

Before: Corrigan, C.J., Young and M.J. Talbot*, JJ.

MEMORANDUM.

After being tried as an adult, defendant was convicted by a jury of assault with intent to rob while armed, carrying a concealed weapon, and possession of a firearm during the commission of a felony. The Circuit Court then sentenced defendant as an adult to 8 to 20 years for the assault, concurrent to 2 to 5 years for the weapons offense, and a consecutive 2 year sentence for the firearm charge. Defendant appeals by right. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant has failed to supply this Court with a copy of the presentence report, as required by MCR 7.212(C)(7); accordingly, defendant's sentencing issues are not cognizable. However, this Court notes that, with respect to PRV 6, there was testimony at the dispositional hearing that, after defendant's release from Boysville, he was separately charged with receiving and concealing stolen property and a weapons offense, so there would appear to be adequate basis for a 15-point score under PRV 6 in any event. *People v Stone*, 195 Mich App 600, 607-608; 491 NW2d 628 (1992); *People v Maben*, 208 Mich App 652, 654-655; 528 NW2d 850 (1995). Moreover, the trial court rendered the issue of guideline scoring moot by stating that the sentence imposed was a proportionate one, without in any way referring to the guidelines. *People v Hull*, 437 Mich 868; 462 NW2d 585 (1990). And an error in scoring the guidelines, absent exceptional circumstances not present here, does not in any event furnish a cognizable basis for appellate relief. *People v Mitchell*, 454 Mich 145; ___ NW2d ___ (1997). In light of the facts of the crime and after reviewing defendant's letter to the trial

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

judge which appears in the lower court file, defendant has clearly failed to overcome the presumption that a sentence within the guideline range is proportionate to the offense and the offender. *People v Eberhardt*, 205 Mich App 587; 518 NW2d 511 (1994).

Without the presentence report, and information concerning whether some of defendant's jail time may have been attributable to other criminal matters, this Court has no way of ascertaining that the sentence credit awarded, to which there was no timely objection, is inaccurate in any respect. However, in light of the prosecutor's confession of error on this issue, the matter will be remanded to the Saginaw Circuit Court for recalculation of defendant's sentence credit.

Defendant's convictions and sentences, except as to the issue of sentence credits, are affirmed; the case is remanded to the Saginaw Circuit Court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Maura D. Corrigan
/s/ Robert P. Young, Jr.
/s/ Michael J. Talbot