

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBBIE DEAN RICHARD,

Defendant-Appellant.

UNPUBLISHED

May 21, 1999

No. 205941

Genesee Circuit Court

LC No. 97-000005 FC

Before: Gage, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, assault with intent to commit armed robbery, MCL 750.89; MSA 28.284, and attempted disarming of a police officer, MCL 750.479b(2); MSA 28.747(2)(2); MCL 750.92; MSA 28.287. Defendant was sentenced to concurrent prison terms of fifteen to thirty years for armed robbery, twelve to thirty years for assault with intent to commit armed robbery, and two to five years for the attempt to disarm a police officer. Additionally, the sentencing court ordered that these terms would run consecutively with time imposed for defendant's conviction on a felony charge that was pending at the time of the instant offenses. Defendant now appeals as of right. We affirm.

Defendant first contends that the trial court lacked the authority to order that his sentences should run consecutively with time imposed for an unrelated conviction. We disagree. Because this presents a question of law, our review is de novo. *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998). "Under the concurrent sentence rule, one sentence may not be ordered to begin at the completion of another sentence unless statutory authority provides otherwise." *People v Givans*, 227 Mich App 113, 126; 575 NW2d 84 (1997). The statute relevant to this case provides that if a person commits a felony of the type at issue here while other felony charges are pending, "the sentences imposed for the prior charged offense and the subsequent offense may run consecutively." MCL 768.7b(2)(a); MSA 28.1030(2)(2)(a). However, "the prerogative of consecutive sentencing is accorded only to the court last in time to impose sentence." *People v Chambers*, 430 Mich 217, 231; 421 NW2d 903 (1988). See also *People v Kennebrew*, 220 Mich App 601, 610; 560 NW2d 354 (1996).

The sentencing hearing in this case commenced prior to the sentencing hearing on the charge that was pending at the time of the instant offenses. The court reviewed the presentence report, allowed for allocution, announced its intended sentences, and indicated that these would run consecutively with the sentence yet to be imposed on the other charge. When it was correctly brought to the court's attention such would be error, see *Chambers, supra* at 231, the court adjourned sentencing until it was the last in time sentencing court. When the sentencing hearing recommenced, the court was informed as to the sentence imposed on the other conviction, it again reviewed the presentence report, allocution was offered a second time, and then the court imposed the same sentences it announced earlier. Defendant argues that the trial court made the mistake forbidden by *Chambers*, and that this mistake was not rectified by going through the motions of reimposing sentence at a time when the court could claim it was the last in time sentencing court.

Defendant's argument rests entirely on the supposition that because the court imposed the same sentences when it was the last in time sentencing court that it articulated when it was the first in time sentencing court, that it could not have carefully considered the punitive effect of the consecutive sentences. It may be presumed that if the other judge sentenced defendant in accord with the court's estimation, that upon due consideration, the properly imposed sentences would not differ from the prematurely announced sentences. A court speaks only through its written orders and judgments. *People v Collier*, 105 Mich App 46, 52; 306 NW2d 387 (1981). Hence, the court was in compliance with the applicable statute and the last-in-time rule from *Chambers*, when it imposed defendant's sentences. Defendant cites no authority for the proposition that almost making an error requires reversal just as if the error had been made. Accordingly, we hold that defendant is not entitled to relief on this basis.

In this same regard, defendant claims that having prematurely announced sentences identical to the ones ultimately imposed, the court denied him a meaningful opportunity to allocute. We disagree. A defendant has a right to address the sentencing court and advise it of circumstances he "believe[s] the court should consider in imposing sentence." MCR 6.425(D)(2)(c). As our Supreme Court stated in *People v Berry*, 409 Mich 774, 780; 298 NW2d 434 (1980), a defendant's right to address the court before sentence is imposed "is an important and integral aspect of the truth discovery purpose of the criminal justice process" However, contrary to defendant's contention, our examination of the record reveals that defendant was afforded the opportunity to address the court pursuant to MCR 6.425(D)(2)(c) before the court prematurely announced defendant's sentences and prior to the time the court actually imposed them. Under the facts in this case, defendant's right of allocution was not offended.

Finally, defendant contends that his fifteen and twelve year minimum sentences, for armed robbery and assault with intent to commit armed robbery, violate the rule of proportionality. We disagree. This Court reviews the trial court's sentencing determination for an abuse of discretion in that the sentences must be proportionate to the offense and the offender. *People v Milbourn*, 435 Mich 630, 634-636; 461 NW2d 1 (1990). We note, as did the trial court, that defendant's crimes were of the most serious nature and that the victims were children. This, coupled with defendant's act of attempting to seize the arresting officer's firearm during a struggle, is persuasive evidence that defendant

posed a serious threat to society. When viewed in light of defendant's escalating criminal record, history of abusiveness, and his resistance to voluntary treatment with regard to his mood disturbances and substance abuse, we conclude that the trial court did not abuse its discretion and defendant's sentences are proportionate to the offenses and the offender.

Affirmed.

/s/ Hilda R. Gage

/s/ Michael R. Smolenski

/s/ Brian K. Zahra