

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GENE ANTHONY SUMMERS,

Defendant-Appellant.

UNPUBLISHED

January 24, 2003

No. 234062

Genesee Circuit Court

LC No. 97-000965-FH

Before: White, P.J., and Kelly and R. S. Gribbs*, JJ.

MEMORANDUM.

Defendant was convicted by a jury of receiving and concealing stolen property, MCL 750.535(1), and sentenced as a fourth habitual offender, MCL 769.12(1)(a), to six to twenty years in prison. Defendant appealed. This Court affirmed defendant's conviction but remanded for resentencing before a different judge. *People v Gene Anthony Summers*, unpublished opinion per curiam of the Court of Appeals, issued 1/5/01 (Docket No. 213399). Defendant was resentenced in March 2001, to 42 to 180 months, with credit for 968 days. Defendant appeals as of right, challenging the sentence as disproportionate.

Because defendant has already served his minimum sentence we are unable to fashion a remedy, and his challenge has become moot. See *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Defendant's appeal is dismissed as moot.

/s/ Helene N. White

/s/ Kirsten Frank Kelly

/s/ Roman S. Gribbs

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