

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO FRANCISCO DORTCH,

Defendant-Appellant.

UNPUBLISHED

July 20, 2006

No. 261042

Kalamazoo Circuit Court

LC No. 04-001640-FH

Before: Neff, P.J., and Bandstra and Zahra, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of felonious assault, MCL 750.82. He appeals as of right, challenging only his sentence of one to four years' imprisonment. We dismiss this case as moot.

Defendant does not distinguish between his minimum and maximum sentences in making his argument. Because he challenges the legitimacy of neither the statutory maximum of four years for felonious assault, MCL 750.82(1), nor the custom of using the statutory maximum for the upward limit of an indeterminate sentence, we infer that he is putting only his minimum sentence at issue.

Defendant has already served his one-year minimum sentence that began on February 7, 2005. Information obtained from the Department of Corrections indicates that defendant is no longer incarcerated, but came under parole supervision on April 25, 2006. Because this Court is without ability to fashion a remedy in response to defendant's issue on appeal, we decline to address it as moot. See *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).¹

¹ Moreover, because defendant's minimum sentence fell within the recommended range under the sentencing guidelines, we would be legislatively bound to affirm it in any event. "If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence." MCL 769.34(10). Because defendant asserts neither a scoring error nor that inaccurate information tainted the proceedings, our duty is to affirm.

Dismissed as moot.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Brian K. Zahra