

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BURTON ANDREW SMITH,

Defendant-Appellee.

UNPUBLISHED

January 31, 1997

No. 190277

Huron Circuit Court

LC No. 95-3744-AR

Before: McDonald, P.J., and Bandstra and C. L. Bosman*, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from a Huron Circuit Court order reversing an order of the 73rd District Court granting plaintiff's post-sentencing motion to modify defendant's sentence. Plaintiff sought to modify defendant's sentence to provide for restitution, so as to conform defendant's sentence to the Crime Victim's Rights Act (CVRA), MCL 780.751 *et seq.*; MSA 28.1287(751) *et seq.* The circuit court held the "course of conduct" contemplated by the CVRA's restitution provisions only includes the actual crime to which a defendant pleads. We disagree, and we further find defendant's original sentence was invalid because restitution was not ordered as required by the CVRA. We reverse.

Defendant was charged with larceny (in a building), MCL 750.360; MSA 28.592, and entered into a plea bargain in which he agreed to plead guilty to the lesser offense of conspiracy to commit larceny of a value less than \$100, MCL 750.157a; MSA 28.354(1). The CVRA provides restitution shall be ordered for any victim of a defendant's "course of conduct" that gives rise to a conviction, including a misdemeanor conviction. MCL 780.766(2), 780.826(2); MSA 28.1287(766)(2), 28.1287(826)(2). The circuit court determined restitution was nonetheless inappropriate since the "course of conduct" leading to defendant's conspiracy conviction was necessarily only the act of agreeing to commit the offense, and no restitution was possible based on a mere agreement. However, the circuit court construed the CVRA mandate too narrowly. This Court has long held restitution may be appropriate for acts of which there has been no conviction. Defendant need not have been

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

convicted of larceny in order to make restitution for it. *People v Persails*, 192 Mich App 380; 481 NW2d 747 (1991); *People v Bixman*, 173 Mich App 243; 433 NW2d 417 (1988).

Defendant contends his sentence may not now be modified. We disagree. While the court rules generally preclude modification of a valid sentence, invalid sentences may properly be modified. MCR 6.429(A). Defendant's sentence is invalid because the sentencing court failed to comply with the mandate of the CVRA. Modification is appropriate when the sentencing court fails to comply with an applicable statute. E.g., *People v Kaczorowski*, 190 Mich App 165; 475 NW2d 861 (1991).

Reversed and remanded to the circuit court for entry of an order consistent with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Richard A. Bandstra
/s/ Calvin L. Bosman