

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN LEE HENLEY,

Defendant-Appellant.

UNPUBLISHED

September 19, 1997

No. 189597

Recorder's Court

LC No. 89-010126-FC

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

On prior appeal of right, No. 136695, this Court viewed information suggesting that defendant's commission of this offense was linked to drug usage as inaccurate. We remanded this case to the trial court for evaluation of the propriety of resentencing based on whether such purportedly inaccurate information played a role in the sentencing decision. On remand, the original sentencing judge contended that the information on which she relied was in fact accurate, but she concluded that she had indeed taken defendant's involvement with drugs into account and that she could not put this information aside for purposes of a resentencing. Accordingly, she granted a resentencing but recused herself, causing a different judge to be assigned to the case.

The new judge examined the file and determined that in a letter he addressed to the original sentencing judge, dated prior to the original sentencing and initialed and dated by the sentencing judge more than a week before the original sentencing, defendant admitted his involvement with drugs as a contributing factor in the offense. The successor judge therefore concluded that the original sentence was not based on inaccurate information in any respect and he reinstated that sentence. That generated the present appeal of right, which is being decided without oral argument pursuant to MCR 7.214(E).

Once the original judge recused herself from the case and a successor or substitute was appointed, the newly assigned judge had full authority to make any ruling required by the facts of the case and the applicable law, including revisiting or revising any prior, non-final decision of the original judge. *Huber v Frankenmuth Mutual Ins Co*, 160 Mich App 568, 573-574; 408 NW2d 505 (1987); MCR 2.604.

This result is not precluded by the law of the case doctrine. The law of the case doctrine applies only when the facts are unchanged on a subsequent appeal. *Topps-Toeller, Inc, v City of Lansing*, 47 Mich App 720; 209 NW2d 843 (1973). Here, the “facts” have changed. Additionally, the law of the case doctrine in criminal cases is not inflexible and will not be applied to create an injustice. *People v Herrera (On Remand)*, 204 Mich App 333, 340-341; 514 NW2d 543 (1994). Because, in the absence of inaccurate information underlying the original sentence and rendering it invalid, separation of powers principles preclude the judiciary from granting a resentencing, Const 1963, art 3, §2; *In re Jenkins*, 438 Mich 364; 475 NW2d 279 (1991), the successor judge properly concluded that as defendant’s original sentence was based on accurate information, it was valid and should therefore properly be reinstated.

Affirmed.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski