

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL BURTON,

Defendant-Appellant.

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UNPUBLISHED  
October 28, 1997

No. 206720  
Saginaw Circuit Court  
LC No. 92-006023-FH

ON REMAND

Before: Fitzgerald, P.J., and Griffin and Jansen.

PER CURIAM.

This case is on remand from the Michigan Supreme Court for reconsideration in light of *People v Miles*, 454 Mich 90; 559NW2d 90 (1997). We affirm.

In our original opinion,<sup>1</sup> on the prosecutor's cross-appeal we vacated that portion of the trial court's judgment of sentence that imposed concurrent sentences for defendant's convictions of manufacture of more than fifty but less than 250 grams of a controlled substance, and conspiracy to manufacture a controlled substance in the same amount, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). We ordered the trial court to revise defendant's judgment of sentence to reflect that defendant's ten to twenty year sentences are to be served consecutively pursuant to MCL 333.7401(3); MSA 14.15(7401)(3). *People v Sammons*, 191 Mich App 351, 375; 478 NW2d 901 (1991).

In *Miles, supra*, the defendant pleaded guilty of armed robbery and possession of a firearm during the commission of a felony. At the time of the plea, he was advised that he would serve a two-year term for the felony-firearm conviction. Thereafter, following receipt of a letter from a Department of Corrections employee indicating that the defendant had a previous felony-firearm conviction and after further investigation, the trial court entered an amended judgment providing a five-year sentence for the felony-firearm conviction without notice to either party and without a resentencing hearing. This Court affirmed.

On appeal to the Supreme Court, the Court addressed the procedural safeguards that must be afforded a defendant when an invalid sentence is modified. The Court noted that "certain modifications

of invalid sentences are ministerial in nature and do not require a resentencing hearing; however, other modifications require the due process protections of a resentencing hearing.” *Id.* at 98-99. The Court hesitated to declare the sentence modification in *Miles* purely ministerial despite the fact that the inaccuracy involved a mandatory enhancement provision because the defendant’s sentences were based on inaccurate information in the presentence report.

Here, defendant was subject to the mandatory sentence enhancement provision of MCL 333.7401(3); MSA 14.15(7401)(3) based upon his two present convictions.<sup>2</sup> *People v Denio*, 454 Mich 691; 564 NW2d 13 (1997). Defendant had the opportunity at sentencing to challenge any information related to the convictions. The sentence imposed by the trial court was invalid *solely* because the sentencing court failed to impose statutorily-mandated consecutive sentences. Hence, the sentence modification at issue is purely ministerial and defendant is not entitled to a resentencing hearing.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Richard Allen Griffin

/s/ Kathleen Jansen

<sup>1</sup> In our original opinion, *People v Burton*, unpublished per curiam opinion of the Court of Appeals, issued October 26, 1994 (Docket No. 156140), we affirmed defendant’s convictions, vacated that portion of the judgment that imposed concurrent sentences, and ordered the trial court to revise defendant’s judgment of sentence to reflect that defendant’s sentences are to be served consecutively. On remand, only the sentencing issue is before us.

<sup>2</sup> The sentence imposed for each of the convictions was also mandated by statute. Section 7401(2)(a)(iii) provides that the sentence for violation of the section *shall* be not less than ten years. The conspiracy statute, MCL 750.157a; MSA 28.354(1), imposes a penalty equal to that which could be imposed if the defendant had been convicted of committing the crime he conspired to commit.