

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD DANIEL RIMKA,

Defendant-Appellant.

UNPUBLISHED
November 4, 1997

No. 196729
Recorder's Court
LC No. 82-003909

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Defendant appeals by right from a life sentence for first-degree criminal sexual conduct, imposed by the Recorder's Court at a resentencing conducted on April 15, 1996.

A trial court lacks jurisdiction to resentence a defendant unless the originally imposed sentence is invalid. *In re Dana Jenkins*, 438 Mich 364, 368-369; 475 NW2d 279 (1991). Here, defendant was originally convicted of numerous offenses, which, with the exception of two convictions and resulting life sentences for first degree criminal sexual conduct, were reversed on appeal of right to this Court, this Court's Docket No. 68480. On further appeal, the Supreme Court vacated one of the two first degree criminal sexual conduct convictions. *People v Rimka*, 422 Mich 931; 369 NW2d 202 (1985). Neither this Court nor the Supreme Court directed a resentencing as to the affirmed conviction of first-degree criminal sexual conduct, and the lower court record contains neither a motion for resentencing nor an order of resentencing. Accordingly, the trial court lacked jurisdiction to resentence defendant in the first instance, and the judgment of sentence imposed at resentencing is vacated and the original sentence of life imprisonment, imposed November 4, 1982, is reinstated. MCR 7.216(A)(7).

This appeal of right was in any event limited to the issues arising from the resentencing itself. *People v Jones*, 394 Mich 434, 436; 231 NW2d 649 (1975). The issues raised in defendant's pro se supplemental brief concern the original proceedings, and would in any event be outside this Court's jurisdiction on this appeal. Furthermore, those issues were previously adjudicated adversely to defendant on the merits in this Court's Docket No. 107634 (order of September 28, 1988), and the

Supreme Court denied leave to appeal, so the law of the case doctrine would preclude reconsideration of these issues. *Johnson v White*, 430 Mich 47, 53; 420 NW2d 87 (1988).

Defendant's sentence of April 15, 1996, is vacated; his life sentence imposed November 4, 1982, is reinstated. This cause is remanded to the trial court for correction of its records in conformity with this opinion and transmittal of corrected judgments to the Department of Corrections. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs