

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

STEPHEN TAURICE MATHISON,

Defendant-Appellee.

UNPUBLISHED

May 25, 1999

No. 213688

Berrien Circuit Court

LC No. 92-000115 FC

Before: Sawyer, P.J., and Murphy and Talbot, JJ.

PER CURIAM.

The prosecutor appeals by leave granted the trial court's order that defendant be resentenced for his 1992 conviction for murder in the second degree, MCL 750.317; MSA 28.549. The trial court by written opinion found that defendant had demonstrated the "good cause" and "actual prejudice" necessary to be granted relief from defendant's judgment of sentence pursuant to MCR 6.508 and ordered that defendant be resentenced. We reverse.

The prosecutor argues that defendant did not, as a matter of law, demonstrate either "good cause" or "actual prejudice" as MCR 6.508 requires before defendant is entitled to post-appellate relief from judgment. We review de novo the trial court's determinations respecting questions of law. *People v Sierb*, 456 Mich 519, 522; 562 NW2d 781 (1998).

Because defendant did not allege a jurisdictional defect, the court rule demands that defendant show "good cause" and "actual prejudice" in order to prevail in this motion for relief from judgment. MCR 6.508(D)(3). Further, MCR 6.508(D)(3)(b)(iv) provides that when a defendant, as here, is challenging a sentence under the court rule, defendant must show that his sentence is invalid to have satisfied the "actual prejudice" prong of the rule.

We conclude that defendant failed to establish actual prejudice because he has not shown that his sentence was invalid. In his motion for relief from judgment, defendant argued that Offense Variable (OV) 3 was scored inaccurately on his presentence investigation report at 25, while it should have been scored at 10, and that both his trial and appellate counsel were ineffective for failing to raise this issue. Importantly, however, an error in the scoring of the sentencing guidelines does not render a sentence

invalid where, as here, a scoring challenge is not directed to the accuracy of the factual basis for the sentence, but, rather, to the sentencing court's calculation of the offense variable on the basis of the court's discretionary interpretation of the unchallenged facts. See *People v Raby*, 456 Mich 487, 499; 572 NW2d 644 (1998); *People v Mitchell*, 454 Mich 145, 175; 560 NW2d 600 (1997).

Accordingly, because defendant did not establish that his sentence was invalid, the trial court erred in granting defendant's motion for relief from judgment. The trial court's order of resentencing is vacated and defendant's original sentence is affirmed.

/s/ David H. Sawyer

/s/ William B. Murphy

/s/ Michael J. Talbot