STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 28, 1999
v	No. 210016 Wayne Circuit Court
STEWART BRADLEY, Defendant-Appellant.	LC No. 97 005978

Before: Neff, P.J., and Murphy and J.B.Sullivan,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant was sentenced as a fourth felony offender, MCL 769.13; MSA 28.1085, to two to twenty years' imprisonment. The term is to be consecutive to the two- to twenty-year sentence for which defendant was on parole, toward which defendant was credited with fifty-five days served. Defendant appeals as of right. We affirm defendant's convictions and sentence, but remand for correction of the judgment of sentence.

Defendant first argues that his waiver of the right to a jury trial was not understandingly made because he believed it was conditioned upon either Judge Robert Evans or Judge Maggie Braxton presiding over his bench trial. Defendant had a clear opportunity to have this issue addressed in the trial court when he discovered that Judge Harvey Tennen was to hear his case. If there truly was a misunderstanding, defendant should have made it known before the trial began, either by a motion to withdraw the waiver or an objection to Judge Tennen's appointment to the case.

The purpose of appellate preservation requirements is to induce parties to act at the trial court level "to prevent error and eliminate its prejudice, or to create a record of the error and its prejudice." *People v Mayfield*, 221 Mich App 656, 660; 562 NW2d 272 (1997). The general rule that an unpreserved claim is forfeited serves "the important need to encourage all trial participants to seek a fair

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

and accurate trial the first time around." *People v Grant*, 445 Mich 535, 551; 520 NW2d 123 (1994). Because defendant either negligently failed to recognize the opportunity to raise this issue at trial, or purposefully ignored the opportunity in order to await the outcome of the trial, we will not consider the issue on appeal. To do otherwise would allow defendant to harbor error as an appellate parachute. *People v Ward*, 459 Mich 602, 604; 594 NW2d 47 (1999); *People v Fetterly*, 229 Mich App 511, 520; 583 NW2d 199 (1998).

We recognize that defendant has framed this issue with reference to his constitutional right to a jury trial. However, defendant does not argue that he did not intend to waive his right to a jury trial. Instead, he argues that because particular judges did not preside over his bench trial, his waiver was invalid. Under the circumstances, the constitutional right to a jury trial is not implicated. Moreover, the cases cited by defendant do not support his position. This case does not present such "compelling or extraordinary circumstances" to warrant our review, *Grant, supra*, at 546, nor could the alleged error be "decisive of the outcome." *Id.*, at 547. See also, *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999).

In any event, defendant's argument is without merit. We review for clear error a trial court's determination that a defendant validly waived his right to a jury trial. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997). The transcript of the arraignment proceeding shows that defendant merely hoped, and did not insist, that his bench trial would be before Judge Braxton. He also signed an unambiguous jury waiver form and made no mention thereon of his intent to have his waiver be conditional. Furthermore, the fact that defendant did not object or in any way acknowledge his alleged misunderstanding when Judge Tennen was scheduled to hear his case severely undermines his claim. Thus, the trial court's finding that defendant knowingly and understandingly waived his right to a jury trial was not clearly erroneous.

Defendant next argues that he is entitled to a resentencing because the judgment of sentence and the sentencing transcript are in conflict. We disagree. A resentencing is authorized only if the sentence is invalid. *People v Cade (Aft Rem)*, 201 Mich App 459, 461; 506 NW2d 586 (1993). When sentencing an habitual offender, the court may (1) impose a single sentence on the habitual offender conviction, or (2) impose two separate sentences, one each on the underlying offense and the habitual offender charge, with the sentence on the underlying conviction being vacated upon sentencing on the habitual offender conviction. *People v Hardin*, 173 Mich App 774, 778; 434 NW2d 243 (1988).

In this case, the sentencing court chose the option of imposing sentences on each of the underlying offenses, and then vacating those sentences and sentencing on the habitual offender conviction. The court made defendant aware that he would be serving a total of two years, and that this two years would be served as "habitual time." The judgment of sentence reflects that defendant was sentenced to two to twenty years' imprisonment pursuant to his conviction as an habitual offender. While the transcript could be clearer (we note that both defendant and plaintiff interpret it differently), a court speaks through its written orders and judgments. *People v Carlos Jones*, 203 Mich App 74, 82; 512 NW2d 26 (1993).

Furthermore, without a clear purpose, a clarification of defendant's sentence would be a burden on the sentencing court. Defendant was convicted and sentenced as an habitual offender. Thus, the statutory guidelines for sentencing do not apply. *People v Gatewood*, 450 Mich 1025; 546 NW2d 252 (1996). Moreover, defendant's sentence actually falls below the statutory guidelines for the underlying felonies. Therefore, a clearer articulation of the reasons for the sentence would be unwarranted even if an actual conflict did exist between the judgment of sentence and the sentencing transcript. *People v Beneson*, 192 Mich App 469, 471; 481 NW2d 799 (1992).

While not raised by either party, we remand this case to the trial court for the ministerial task of correcting the judgment of sentence to reflect that defendant was sentenced as a fourth habitual offender not pursuant to MCL 769.13; MSA 28.1085, but rather pursuant to MSA 769.12; MSA 28.1084. *People v Brown*, 220 Mich App 680, 685; 560 NW2d 80 (1996).

Defendant's convictions and sentence are affirmed and this case is remanded. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Joseph B. Sullivan