

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBIE LANELL GEORGE,

Defendant-Appellant.

UNPUBLISHED

January 28, 2000

No. 214103

Wayne Circuit Court

LC No. 94-012633

Before: Cavanagh, P.J., White and Talbot, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549, armed robbery, MCL 750.529; MSA 28.797, four counts of assault with intent to rob while armed, MCL 750.89; MSA 28.284, and possession of a firearm during the commission of a felony (“felony-firearm”), MCL 750.227b; MSA 28.424(2).¹ Defendant was originally sentenced to concurrent terms of forty to sixty years’ imprisonment for the second-degree murder conviction, forty to sixty years for the armed robbery conviction, and forty to sixty years for each of the assault with intent to rob while armed convictions; additionally, defendant was sentenced to a mandatory consecutive term of two years’ imprisonment for the felony-firearm conviction.

Following defendant’s first appeal, this Court affirmed his convictions, but remanded the case for resentencing before a different judge on the ground that the sentencing judge had “improperly relied on [her] belief that defendant[] had committed first-degree murder, a charge of which [he was] acquitted by the jury.” *People v Prince*, unpublished opinion per curiam of the Court of Appeals, issued February 28, 1997 (Docket Nos. 186979 and 186988), p 4. On remand, defendant was resentenced by Wayne Circuit Court Judge Warfield Moore, Jr., to concurrent terms of thirty to sixty years in prison for the second-degree murder conviction; forty to sixty years for the armed robbery conviction; and thirty to sixty years for each of the assault with intent to rob while armed convictions. Judge Moore additionally sentenced defendant to a consecutive term of two years in prison for the felony-firearm conviction. Defendant now appeals as of right. We reverse defendant’s sentences and again remand for resentencing.

Defendant argues that he must be resentenced because the resentencing judge made no effort to familiarize himself with the facts of the case and, therefore, exercised no discretion in resentencing defendant. Defendant further contends that the resentencing judge erroneously perceived that his sole duty on resentencing was to review the sentences originally imposed to determine whether they were appropriate. We agree and conclude that the resentencing judge abdicated his responsibility to familiarize himself with information necessary to fashion a sentence appropriate to the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Rockey*, 237 Mich App 74, 79; 601 NW2d 887 (1999). A sentencing court must articulate on the record the criteria considered and the reasons supporting its decision regarding the length and nature of the sentence imposed. *People v Rice (On Remand)*, 235 Mich App 429, 445-446; 597 NW2d 843 (1999); *People v Sandlin*, 179 Mich App 540, 542; 446 NW2d 301 (1989). Furthermore, “[d]ue process requires that a sentence be based on accurate information” *People v Zinn*, 217 Mich App 340, 347; 551 NW2d 704 (1996).

The record reveals that the resentencing judge was unfamiliar with the facts presented at trial, and, further, that he was operating under the erroneous belief that he need not become familiar with the facts. The resentencing judge defined the issue on remand as whether “the sentence [previously imposed] was fair under the circumstances,” and stated that his job as the resentencing judge was to take “a fresh look to see whether [the original sentence] is an appropriate sentence.” However, “the authority to review sentences must remain the exclusive ‘province of the appellate courts.’ ” *People v Wybrecht*, 222 Mich App 160, 170; 564 NW2d 903 (1997), quoting *In re Jenkins*, 438 Mich 364, 369; 475 NW2d 279 (1991). The resentencing judge’s task was to exercise his own independent judgment regarding the appropriate sentences, without regard to the sentences that had been previously imposed.

The resentencing judge repeatedly indicated that he was unfamiliar with the facts of the case; for instance, the judge stated that he had not read the trial transcripts, that he did not “know anything about whether [defendant] did or did not shoot the gun,” and that he did not know that defendant had been prosecuted for the murder of Yolanda Riley on an aiding and abetting theory. Additionally, there is nothing in the record demonstrating that the resentencing judge had acquainted himself with defendant’s personal background. Accordingly, defendant is entitled to be resentenced once again.²

Accordingly, we remand this case for resentencing. As with the initial remand, because it might reasonably be expected that the resentencing judge would have substantial difficulty in putting out of his mind his previously-expressed views, sentencing should occur before a different judge. See *People v Hill*, 221 Mich App 391, 398; 561 NW2d 862 (1997); *People v Evans*, 156 Mich App 68, 71-73; 401 NW2d 312 (1986). On remand, the sentencing judge should become familiar with the facts of the case, as well as defendant’s background. Additionally, should the

court exceed the guidelines range, it must articulate the reasons for the departure. *Milbourn, supra* at 657, 660; *Rockey, supra* at 79-81.

Reversed and remanded for resentencing. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Helene N. White

/s/ Michael J. Talbot

¹ Defendant was tried jointly with codefendant Deon Jermaine Prince, who was convicted of second-degree murder, armed robbery, felony-firearm, and four counts of attempted armed robbery (Docket No. 213405).

² Although this issue was not raised by defendant on appeal, we note that the resentencing judge failed to articulate his reasons for exceeding the sentencing guidelines range.