

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ERIC JOHN STANLEY,

Defendant-Appellee.

UNPUBLISHED

January 28, 2000

No. 214950

Saginaw Circuit Court

LC No. 98-015189 FH

Before: Murphy, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Defendant was convicted of operating a vehicle under the influence of intoxicating liquor, third offense, MCL 257.625(1) and (7)(d); MSA 9.2325(1) and (7)(d), and of driving with a suspended license, MCL 257.904(1); MSA 9.2604(1). The prosecutor appeals defendant's OUIL third sentence by leave granted, arguing that defendant's sentence violates the penalty provision set forth in MCL 257.625(7)(d); MSA 9.2325(7)(d) which mandates incarceration. We reverse and remand for resentencing.

Defendant pleaded guilty to operating a vehicle under the influence of intoxicating liquor, third offense, and to driving with a suspended license, pursuant to a plea agreement with the prosecution. The plea agreement provided that for the OUIL third conviction, defendant would be sentenced to five years' probation, with the first year to be served in the county jail. The prosecution further stated that it would not object to the trial court sentencing defendant to the in-house treatment program at Tri-Cap, or to defendant participating in work release from either Tri-Cap or the county jail. On the OUIL third conviction, the trial court sentenced defendant to five years' probation and one year in the Tri-Cap residential program, in lieu of one year in the county jail. Defendant was sentenced to two days in the county jail, with credit for time served, for the driving with a suspended license conviction. The prosecutor argues that the trial court violated MCL 257.625(7)(d); MSA 9.2325(7)(d) by sentencing defendant to one year in a residential treatment program *in lieu of* incarceration in the county jail.

We review questions of statutory interpretation de novo. *People v Fetterley*, 229 Mich App 511, 525; 583 NW2d 199 (1998). The rules of statutory construction require the courts to ascertain

and give effect to the Legislature's intent. *People v Stanaway*, 446 Mich 643, 658; 521 NW2d 557 (1994). In ascertaining the legislative intent, this Court should first look to the specific statutory language. *People v Pitts*, 216 Mich App 229, 232; 548 NW2d 688 (1996). If the language in the statute is clear and unambiguous, judicial construction is neither necessary nor permitted. *People v Nantelle*, 215 Mich App 77, 80; 544 NW2d 667 (1996). However, if a literal construction of statute would produce unreasonable and unjust results, *Fetterley*, *supra* at 525, or if reasonable minds could differ as to the meaning of a statute, judicial construction is appropriate. *People v Armstrong*, 212 Mich App 121, 123; 536 NW2d 789 (1995).

MCL 257.625(1)(a); MSA 9.2325(1)(a) prohibits a person from driving while under the influence of intoxicants. MCL 257.625(7)(d); MSA 9.2325(7)(d) provides:

If the violation occurs within 10 years of 2 or more prior convictions, the person is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

(i) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year. Not less than 48 hours of imprisonment imposed under this subparagraph shall be served consecutively. [MCL 257.625(7)(d); MSA 2325(7)(d).]

Moreover, subsection (7)(e) provides that “[t]he term of imprisonment imposed under subdivision (D) [sic] shall not be suspended.”

The Legislature alone is conferred with the power to fix the minimum and maximum punishment for all crimes. *People v Morgan*, 205 Mich App 432, 433; 517 NW2d 822 (1994). Absent legislative authority, the courts have no discretionary power to deviate from mandatory sentences required by statute. *People v Palm*, 245 Mich 396, 403-404; 223 NW 67 (1929). The word “shall” indicates mandatory rather than discretionary action, *People v Grant*, 445 Mich 535, 542; 520 NW2d 123 (1994), and thus, the trial court was required to impose a sentence which includes a minimum term of one-year imprisonment, or a minimum of thirty days in the county jail. Because the sentence imposed by the trial court does not meet the requirements, it is outside the statutory limits set by the Legislature and is invalid. *Morgan*, *supra* at 433.

While we find that the trial court's sentence was statutorily invalid we note, however, that the plea agreement, as stated by the prosecution and agreed to by defendant on the record, can be interpreted so as to lead to the conclusion that the prosecutor did not object to defendant's participation in the Tri-Cap residential program in lieu of incarceration. In this regard, then, we find that the trial court's sentence was consistent with a reasonable interpretation of the parties' plea agreement. Nonetheless, the parties may not agree to and the trial court may not impose an invalid sentence. See *People v Bracey*, 124 Mich App 401, 405-406; 335 NW2d 49 (1983). Therefore, we remand for resentencing at which time defendant must be afforded an opportunity to withdraw his plea because a sentence imposing jail time is not consistent with defendant's understanding of the plea agreement.

Reversed and remanded for resentencing consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Hilda R. Gage

/s/ Kurtis T. Wilder