

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEON J. PRINCE,

Defendant-Appellant.

UNPUBLISHED

April 14, 2000

No. 213405

Wayne Circuit Court

LC No. 94-010227

Before: Cavanagh, P.J., and 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 attempted armed robbery, MCL 750.92; MSA 28.287; MCL 750.529; MSA 28.797, 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 by Detroit Recorder’s Court Judge Geraldine Bledsoe Ford to concurrent terms of forty to sixty years’ imprisonment for the second-degree murder conviction, forty to sixty years’ imprisonment for the armed robbery conviction, and forty to sixty months’ imprisonment for each of the attempted robbery convictions; additionally, defendant was sentenced to a mandatory consecutive term of two years’ imprisonment for the felony-firearm conviction. On appeal, a panel of this Court affirmed his convictions, but remanded the cause 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 *People v Prince*, unpublished opinion per curiam of the Court of Appeals, issued February 28, 1997 (Docket Nos. 186979 and 186988), p 4.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 Judge Warfield Moore, Jr., to concurrent terms of thirty to sixty years for the second-degree murder conviction; thirty to sixty years for the armed robbery conviction; forty to sixty months for each of the attempted armed robbery convictions, and a consecutive two-year term for the felony-firearm conviction. Defendant now appeals as of right. We affirm the sentences but remand for correction of the judgment of sentence.

On appeal, defendant argues that Judge Moore “should be held to a presumption of vindictiveness” because he indicated that the forty-year minimum sentence imposed by Judge Ford was

generally appropriate, and because defendant came from a good family, had an educational background beyond high school, and did not have a prior criminal history. We disagree. When a defendant is resentenced by the same judge and the second sentence is longer than the first, there is a presumption of vindictiveness. *People v Mazzie*, 429 Mich 29, 34-35; 413 NW2d 1 (1987); *People v Lyons (After Remand)*, 222 Mich App 319, 323; 564 NW2d 114 (1997). However, the presumption of vindictiveness does not apply where a second sentence is imposed by a judge other than the judge who imposed the original sentence. *Mazzie, supra* at 33; *People v Grady*, 204 Mich App 314, 317; 514 NW2d 541 (1994). Moreover, defendant's sentences were not increased on resentencing; rather, his sentences for second-degree murder and armed robbery were *decreased* by ten years. Accordingly, there is no presumption of vindictiveness with respect to the sentences imposed by Judge Moore. Further, Judge Moore indicted a familiarity with the facts of the case, and focused on the specifics of the offense and defendant's background in sentencing him.

However, we note that defendant's June 8, 1998, judgment of sentence contains several errors which much be corrected. First, the judgment of sentence lists counts three through six as armed robbery convictions, whereas defendant was convicted of only one count of armed robbery and four counts of *attempted* armed robbery. Next, the sentences for counts three through six are incorrectly listed as being forty to sixty *years*, rather than forty to sixty months. Additionally, it appears as though Judge Moore assigned defendant too many days' credit for time served (1,388 days, rather than 1,111 days).

The sentence is affirmed, however the matter is remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Helene N. White

/s/ Michael J. Talbot

¹ Defendant was tried jointly with codefendant Bobie Lanell George, who was convicted of second-degree murder, armed robbery, felony-firearm, and four counts of assault with intent to rob while armed (see Docket No. 214103). George was also resentenced by Judge Moore. However, the transcript of that proceeding fails to reveal the exercise of discretion apparent here.