

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHUR MASSENBURG,

Defendant-Appellant.

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UNPUBLISHED

January 30, 2001

No. 218196

Wayne Circuit Court

LC No. 92-010908

Before: Collins, P.J., and Doctoroff and White, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentences imposed on remand. We vacate those sentences and remand this matter for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After a second trial, defendant was convicted by a jury of kidnapping, MCL 750.349; MSA 28.581, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to life in prison for kidnapping, and to a consecutive two-year term for felony-firearm. Defendant appealed, and in *People v Massenburg*, unpublished opinion per curiam of the Court of Appeals, (Docket No. 199244, issued 12/22/98), another panel of this Court affirmed defendant's convictions but remanded for resentencing. On January 12, 1999 defendant filed a timely application for leave to appeal to our Supreme Court.

On February 24, 1999, while the application to our Supreme Court was still pending, the trial court resentenced defendant. The trial court imposed consecutive sentences of eighteen to thirty years and two years, with credit for 2,107 days, for the convictions of kidnapping and felony-firearm, respectively.

We review an issue regarding the proper interpretation and application of the court rules de novo. *People v Valeck*, 223 Mich App 48, 50; 566 NW2d 26 (1997).

Defendant argues that he is entitled to resentencing for the reason that the trial court was without authority to resentence him while his application to our Supreme Court was still pending. We agree, vacate the sentences imposed on February 24, 1999, and remand this matter for resentencing. Our opinion in Docket No. 199244 was our judgment in that matter. MCR 7.215(D)(1). Because defendant filed a timely application for leave to appeal to our Supreme

Court, MCR 7.302(C)(4)(a), our judgment was not effective immediately upon issuance. Rather, the judgment became effective after the disposition of the application by the Supreme Court on September 29, 1999. MCR 7.215(E)(1)(a). The filing of the application stayed proceedings on remand. MCR 7.302(C)(5)(a). The trial court was without authority to resentence defendant until the Supreme Court disposed of the application for leave to appeal from our decision in Docket No. 199244. MCR 7.302(F)(3); see also *Detroit v General Motors Corp*, 233 Mich App 132, 140; 592 NW2d 732 (1998). Therefore, the sentences imposed by the trial court on February 24, 1999 are invalid, and defendant is entitled to be resentenced.

Defendant's sentences are vacated, and this case is remanded for resentencing in accordance with this opinion. We do not retain jurisdiction.

/s/ Jeffrey G. Collins  
/s/ Martin M. Doctoroff  
/s/ Helene N. White