

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW JAMES BULLARD,

Defendant-Appellant.

UNPUBLISHED

April 13, 2001

No. 224278

Grand Traverse Circuit Court

LC No. 98-007495-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW JAMES BULLARD,

Defendant-Appellant.

No. 224355

Leelanau Circuit Court

LC No. 98-000958-FH

Before: Wilder, P.J., and Hood and Cavanagh, JJ.

PER CURIAM.

In these consolidated cases, defendant appeals by delayed leave granted the trial court's order denying his motion to reinstate his probationary sentences in two cases. We reverse the trial court's order and remand for reinstatement of defendant's original sentences.

I. Facts and Proceedings

On February 27, 1998 and May 8, 1998 defendant pleaded guilty in separate cases to receiving or concealing stolen property over \$100, MCL 750.535; MSA 28.803 [No. 224278], and to second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3) [No. 224355]. Both offenses occurred in late 1997. At the second plea hearing, the prosecution noted that defendant was being investigated in connection with other offenses, and that further charges could be brought at a later date. On May 22, 1998 the court sentenced defendant to concurrent terms of three years' probation. As a condition of probation in each case, defendant was required to

successfully complete the Special Alternative Incarceration (SAI) program (“boot camp”).¹ Defendant began boot camp on June 4, 1998 and was scheduled to graduate on September 1, 1998.

On July 17, 1998, defendant was charged in Grand Traverse County with breaking and entering an automobile,² unlawfully driving away an automobile,³ and breaking and entering a building with intent to commit larceny, MCL 750.110; MSA 28.305, alleged to occur in early January, 1998. Defendant initially entered pleas of not guilty for each offense; however, as a result of the new charges, defendant was no longer able to participate in the boot camp program. The court then modified defendant’s probationary sentences and ordered him confined to the Grand Traverse City jail until the impediments to his participation in the boot camp program were removed and specifically stated that it did not consider the pending felony charges a probation violation, but rather a “technical rule violation that precludes [defendant] from participating in the program.”⁴

In lieu of trial on the additional charges, defendant pleaded guilty to the lesser offense of joy riding, MCL 750.414; MSA 28.646, and breaking and entering a building with intent to commit larceny and the court sentenced defendant to concurrent terms of 16 to 24 months’ imprisonment for the joy riding conviction and 48 to 120’ months imprisonment for the breaking and entering conviction. In addition, the court revoked defendant’s probation and resentenced him to concurrent terms of 40 to 60 months’ imprisonment for the receiving and concealing conviction and 48 to 120 months’ imprisonment for the home invasion conviction.

Following revocation, defendant moved for reinstatement of his probationary sentences. The trial court denied the motion, ruling that defendant’s sentences were invalid for several reasons; first, defendant’s misrepresentations resulted in sentences being imposed on inaccurate information; second, absent resentencing, defendant’s ineligibility for the SAI program would result in sentences without a confinement component; and third, defendant’s failure to disclose

¹ In addition, defendant was to refrain from alcohol, drugs and possession of drug paraphernalia, attend an intensive drug and alcohol treatment program, reside in an approved residence following boot camp, complete his GED or comparable education program, gain and maintain employment, refrain from associating with know felons or those involved in criminal activities, and pay restitution, among other things.

² MCL 750.356a; MSA 28.588(1)

³ MCL 750.414; MSA 28.646

⁴ In an order dated July 28, 1998, the trial court entered an order amending defendant’s probation to include the following provision:

Defendant will remain in the county jail until outstanding charges clear, but not for more than one (1) year, and until bed space is available at the Special Alternative Incarceration Program.

his involvement in the subsequently charged crimes prevented the imposition of proportionate sentences.

II. Standard of Review

Whether a trial court has authority to resentence a defendant is a question of law that this Court reviews de novo. *People v Marcus Harris*, 224 Mich App 597, 599; 569 NW2d 525 (1997). While a trial court may correct an invalid sentence, it cannot modify a valid sentence after imposition, except as provided by law. MCR 6.429(A); *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). A sentence is invalid if it is beyond statutory limits, is based on constitutionally impermissible grounds, is based on improper assumptions of guilt, is based on a misconception of law, is based on inaccurate information, or conforms to local sentencing policy rather than individualized facts. *Id.* If a trial court erroneously sets aside a valid sentence and resentsences, the remedy is reinstatement of the original valid sentence. *In re Jenkins*, 438 Mich 364, 368, 378; 475 NW2d 279 (1991).

III. Analysis

Defendant argues that the trial court lacked authority to resentence him because his original probationary sentences remained valid notwithstanding his subsequent convictions and his ineligibility in the SIA program. We agree. The original probationary sentences imposed in these cases were valid. While a sentencing court may make successful completion of the SAI program a condition of probation, MCL 771.3(2)(n); MSA 28.1133(2)(n); Cf *People v Brown*, 220 Mich App 680, 685; 560 NW2d 80 (1996), here, events occurred after defendant's sentencing that made defendant's successful completion of the SAI program impossible. However, these events did not render the defendant's sentences invalid. See *People v Krim*, 220 Mich App 314, 321; 599 NW2d 366 (1996). The trial court's proper course of action would have been to amend the order of probation to impose new conditions, MCL 771.2(2); MSA 28.1132(2); See also *People v Johnson*, 210 Mich App 630, 634; 534 NW2d 255 (1995), or, if a violation of probation was determined, impose a sentence for that violation. MCL 771.4; MSA 28.1134; *People v Ritter*, 186 Mich App 701, 706; 464 NW2d 919 (1991); See also MCR 6.445. The trial court was not procedurally authorized to vacate the original sentences and simply replace them with new sentences because at the time of the original sentence there was no "tangible legal or procedural error." *People v Wybrecht*, 222 Mich App 160, 167; 564 NW2d 903 (1997); *Miles, supra*; MCR 6.429(A).

In addition, the reasons cited by the trial court for denying defendant's motion to reinstate his original sentences do not support the court's conclusion that the sentences were invalid. During the second plea hearing, the parties disclosed on the record that defendant was being investigated in connection with other criminal offenses, that defendant denied involvement in the incidents, and that the prosecution did not accept defendant's denial. Under these circumstances, any misrepresentations that defendant might have made regarding his involvement in the incidents did not result in the trial court relying on inaccurate information when imposing sentence. Further, the trial court's assertion that defendant's inability to complete the SAI program would result in probationary sentences without a confinement component was not supported by the record. In fact, the court confined defendant to jail for not more than one year, as it was authorized to do. MCL 771.3(2)(a); MSA 28.1133(2)(a). Finally, the trial court had no

authority to review its own sentence to determine the proportionality thereof, regardless of subsequent developments. *Wybrecht, supra* at 167-170.

IV. Conclusion

We reverse the trial court's order denying defendant's motion to reinstate his probation, vacate the trial court's subsequent sentences, and remand with instructions that defendant's original probationary sentences be reinstated. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Mark J. Cavanagh