

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TERRANCE GRIFFIN,

Defendant-Appellee.

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UNPUBLISHED  
February 26, 2004

No. 243658  
Wayne Circuit Court  
LC No. 85-004912

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted the order granting defendant's motion for relief from judgment. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted by a jury of second-degree murder, MCL 750.317, assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony. MCL 750.227b. On February 27, 1986, defendant was sentenced to life imprisonment for murder and assault and to two years' imprisonment for felony-firearm.

In his motion for relief from judgment, defendant argued that he was entitled to resentencing because the original trial court was operating under a misconception regarding the treatment of parolable life sentences by the Parole Board when it imposed a life sentence. The court hearing the motion for relief from judgment agreed, concluding that it had jurisdiction to resentence defendant because the court's predecessor had sentenced defendant under the misapprehension that he would be eligible and considered for parole after ten years. The court consequently resentedenced defendant to eighteen to twenty-seven years' imprisonment for the second-degree murder and assault convictions.

In *People v Moore*, 468 Mich 573, 574-575; 664 NW2d 700 (2003), the defendant was sentenced to a parolable life term in 1981. The Supreme Court held that the failure to accurately predict the actions of the Parole Board did not constitute a misapprehension of law. *Id.* at 580. The Court concluded that the 1981 sentence was valid and that the trial court lacked authority to resentence the defendant. *Id.* at 582. We find *Moore* dispositive. Because the trial court originally imposed a valid sentence, it lacked jurisdiction to resentence defendant, and the defendant's sentence of eighteen to twenty-seven years' imprisonment must be vacated.

Following this Court's grant of leave to appeal, defendant was granted parole. We reject the notion, however, that the instant appeal is moot. The Parole Board's decision to grant parole was based on the erroneous assumption that defendant's sentence of eighteen to twenty-seven years' imprisonment was a valid sentence, when in fact it was not. We conclude that any determination by the Parole Board must incorporate valid factors and accurate information, including the true nature of a defendant's sentence. The board did not consider accurate information, because defendant's sentence of eighteen to twenty-seven years' imprisonment was null in light of the court's lack of jurisdiction to resentence defendant. *Moore, supra* at 580-582. Further, should defendant ever be returned to prison because of a parole violation, his disposition could be materially different under a sentence of life imprisonment as opposed to a sentence of eighteen to twenty-seven years' imprisonment. We conclude that the instant appeal is not moot.

Defendant argues that the Parole Board "has effectively canceled parole for parolable life sentences[]" and in doing so has violated the federal and state constitutional protections against ex post facto laws. This issue is not ripe for review, however, because we do not know whether the Parole Board will again grant defendant parole.

Reversed and remanded for reinstatement of defendant's life sentence. We do not retain jurisdiction.

/s/ Bill Schuette

/s/ Patrick M. Meter

/s/ Donald S. Owens