

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GLADYS DELORES WILSON,

Defendant-Appellee.

UNPUBLISHED

June 17, 2004

No. 245875

Berrien Circuit Court

LC No. 78-002825-FY

Before: Neff, P.J., and Zahra and Murray, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted¹ the trial court's order granting defendant's motion for relief from judgment. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty of aiding and abetting an armed robbery, MCL 750.529; MCL 750.92, in return for dismissal of a charge of first-degree felony murder, MCL 750.316, and was sentenced to life in prison with credit for 298 days. In a prior appeal, this Court affirmed defendant's conviction and sentence. *People v Wilson*, unpublished memorandum opinion of the Court of Appeals, issued November 13, 1980 (Docket No. 43718).

Defendant came within the jurisdiction of the Parole Board after serving ten calendar years, MCL 791.234(6), but was not paroled. Defendant moved for relief from judgment in the trial court, arguing that the Parole Board's stringent standards for granting parole, adopted after her sentence was imposed, rendered her sentence invalid. The trial court granted the motion, concluding that it had jurisdiction to resentence defendant because the sentencing court imposed sentence under a misapprehension of the law.

¹ Defendant makes several constitutional arguments regarding her sentence and the parole board's interpretation of what "life" actually means in sentencing matters. However, we granted the prosecution's application, in which none of these issues are raised, and we limited this appeal to issues raised in the application. These arguments were also not addressed by the trial court. Therefore, defendant's arguments are not properly before this Court.

A trial court has the authority to resentence a defendant when the prior sentence is invalid. A sentencing court's misapprehension of the law can be a ground for concluding that a sentence is invalid. Whether a sentencing court's understanding of the law is a misapprehension is a question of law that we review de novo. *People v Moore*, 468 Mich 573, 579; 664 NW2d 700 (2003).

At the time defendant was sentenced in 1979, a person serving a parolable life term became eligible to be considered for parole after serving ten calendar years. MCL 791.234(6). The sentencing court expressed an understanding that defendant would become eligible for parole at some time, but neither stated that defendant would be entitled to parole at any particular time nor expressed an intent that defendant be granted or denied parole. The sentencing court expressed a correct understanding of the law at the time of sentencing. The failure to accurately predict the actions of the Parole Board does not constitute a misapprehension of the law that renders a sentence invalid. *Moore, supra* at 580. Defendant's original sentence was valid. The trial court lacked authority to resentence defendant. *Id.* at 579.

Reversed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray