

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRIN KEITH REDDEN,

Defendant-Appellant.

UNPUBLISHED

September 16, 2004

No. 247949

Oakland Circuit Court

LC No. 2002-185001-FC

Before: Cavanagh, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his sentence following a conviction of indecent exposure by a sexually delinquent person, MCL 750.335a and MCL 750.10a.¹ Defendant was sentenced as an habitual offender, third offense, MCL 769.11, to a prison term of one day to life. We affirm.

Defendant's sole argument on appeal is that the trial court sentenced him under a misapprehension of the law. Specifically, defendant claims the trial court believed that it was statutorily required to impose a sentence of one day to life imprisonment. Defendant claims that the trial court had the discretion to sentence him to treatment-based probation. *People v Kelly*, 186 Mich App 524, 531; 465 NW2d 569 (1990) (Alternate sentences may be imposed when the evidence justifies a more flexible form of confinement). Therefore, defendant contends, he is entitled to a remand for resentencing. Sentencing issues are reviewed by this Court for an abuse of discretion. *People v Sexton*, 250 Mich App 211, 227; 646 NW2d 875 (2002).

“[A] trial court has been given broad discretion, within limits fixed by law, to tailor a sentence to the circumstances of each case and each offender, in an effort to balance society's need for protection against its interest in rehabilitation of the offender.” *People v Sabin (On Second Remand)*, 242 Mich App 656, 661; 620 NW2d 19 (2000). Permissible considerations include a defendant's criminal, social, and personal history. *People v Oliver*, 242 Mich App 92, 98; 617 NW2d 721 (2000). A trial court has the authority to resentence a defendant only if the initial sentence was invalid, MCR 6.429; *People v Moore*, 468 Mich 573, 579; 664 NW2d 700

¹ Defendant was convicted by a jury of indecent exposure and subsequently pleaded guilty to being a sexually delinquent person.

(2003), and a sentence based on a misconception of law is invalid. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997).

At the time defendant was sentenced, MCL 750.335a provided:²

Any person who shall knowingly make any open or indecent exposure of his or her person or of the person of another shall be guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$500.00, or if such person was at the time of the said offense a sexually delinquent person, may be punishable by imprisonment in the state prison for an indeterminate term, the minimum of which shall be 1 day and the maximum of which shall be life: Provided, That any other provision of any other statute notwithstanding, said offense shall be triable only in a court of record.

Thus, the statute provided “an alternate sentence if the person convicted of indecent exposure was sexually delinquent at the time he committed the offense.” *Kelly, supra*, at 528.

At sentencing, defendant stated that he believed probation and treatment would be a better alternative for him than prison time. He argued that he had been incarcerated before, and it had not made a difference. Following defendant’s statements, the court responded: “I have no options in this other than what state law provides. I have none. People think Judges can do anything and that’s, they’re dead wrong about it. I can’t. I’m limited within the confines of what the law provides.” Defendant contends these statements by the court demonstrate that it misunderstood the law concerning the alternative sentence of probation and treatment. See *Kelly, supra*. We disagree.

Following defendant’s jury conviction of indecent exposure, defendant pleaded no contest to the sexually delinquent charge. At that time, the trial court informed defendant:

Do you understand you’re being charged under the statute with the charge of being a sexually delinquent person under which I could sentence you to one day to life imprisonment?

I could also sentence you to a probationary term which could mean your incarceration in the Oakland County Jail up to a year. Do you understand that?

Because of the court’s explanation regarding its sentencing options when taking defendant’s plea, we cannot say that the trial court was under a misapprehension of the law when it sentenced defendant. The trial court’s explanation of possible sentencing options to defendant

² MCL 750.335a was amended by 2002 PA 672, effective March 31, 2003, by increasing the maximum fine from \$500 to \$1000.

clearly shows its understanding of the possible alternative sentences available.³ See *Kelly, supra*.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Donald S. Owens

³ Defendant also contends that the prosecution misled the court by suggesting the court had no other alternative but to sentence defendant to one day to life. We find this argument unpersuasive. A review of the record clearly shows the prosecution was recommending a sentence of one day to life to the court on the basis of defendant's prior record.