

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MYCHAEL R. FANNIN,

Defendant-Appellant.

UNPUBLISHED

October 5, 2004

No. 247657

Oakland Circuit Court

LC No. 1993-126471-FH

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals as of right his resentencing for breaking and entering an occupied dwelling, MCL 750.110, and attempted armed robbery, MCL 750.529. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted by jury of armed robbery, breaking and entering an occupied dwelling, and attempted armed robbery. He then pleaded guilty to being a second habitual offender. The court imposed individual sentences for each of the crimes, but then vacated those sentences and imposed a single 20 to 40 year sentence for the habitual offender charge. On appeal, this Court affirmed defendant's convictions and his enhanced armed robbery sentence, but remanded for resentencing on the other two convictions. The trial court resentenced defendant to 15 to 22½ years' imprisonment for breaking and entering and 5 to 7½ years' imprisonment for attempted armed robbery.

On appeal, defendant argues that he was denied due process of law where he was tried and sentenced on a charge that was not included in the bindover from district court. He also asserts that he was denied the effective assistance of counsel where his attorneys failed to raise this issue at trial or in the initial appeal.

A defendant is entitled to an appeal as of right from a resentencing because the remand proceedings are an integral part of the constitutionally guaranteed appeal as of right. *People v Jones*, 394 Mich 434, 435; 231 NW2d 649 (1975). However, the scope of the second appeal is limited by the scope of the remand. *Id.* at 435-436. Here, the remand was limited to resentencing on the breaking and entering and attempted armed robbery charges. The armed robbery conviction defendant now challenges was affirmed in its entirety in the original appeal. The issues now raised by defendant were not properly before the trial court on remand and need

not be addressed. See *People v Sobczak-Obetts (After Remand)*, 253 Mich App 97, 107; 654 NW2d 337 (2002).

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood