STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KEITH WAYNE EASTLING,

Defendant-Appellee.

UNPUBLISHED
November 18, 2008

No. 281837
Muskegon Circuit Court
LC No. 06-053215-FH

Before: Bandstra, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Defendant Keith Wayne Eastling pleaded nolo contendere to three charges in two separate criminal proceedings.[1] On February 27, 2007, defendant was sentenced as an habitual offender, third offense, MCL 769.11, to 20 to 30 years' imprisonment for his unarmed robbery conviction. He was also sentenced as an habitual offender, third offense, MCL 769.11 to 16 to 38 years' imprisonment each for his armed robbery and bank robbery convictions. Defendant moved to correct "an invalid" sentence, arguing that his sentence for unarmed robbery violated the principle of proportionality, and that his sentence would have been outside of the recommended minimum sentence range for unarmed robbery if the guidelines range for that crime had been scored. The trial court granted defendant's motion, and defendant was resentenced to 16 to 30 years' imprisonment for his unarmed robbery conviction. Plaintiff now appeals as on leave granted. We affirm.

I. FACTS

The acts giving rise to defendant's sentences began on April 23, 2006, when defendant went into a convenience store and approached the cashier to make a purchase. After the cashier opened the cash register drawer, defendant reached over the counter and grabbed all of the $20 bills. The next day, April 24, 2006, defendant went into a Comerica Bank branch and approached a teller. Defendant handed the teller a note that stated he had a gun, and he

[1] Defendant pleaded nolo contendere to an unarmed robbery, MCL 750.530, that occurred on April 23, 2006, and to an armed robbery, MCL 750.529, and bank robbery, MCL 750.531, that occurred on April 24, 2006.

demanded "20's and 50's only." Defendant left with some of the money. Defendant pleaded nolo contendere to unarmed robbery, armed robbery, and bank robbery.

On February 27, 2007, defendant was sentenced as a habitual offender, third offense, to 20 to 30 years imprisonment for an unarmed robbery conviction. Defendant was also sentenced as a habitual offender, third offense 16 to 38 years imprisonment each for his armed robbery and bank robbery convictions. Defendant then moved to correct the sentences as invalid, arguing that the unarmed robbery sentence was incorrect because the sentencing guidelines were not prepared for defendant's unarmed robbery charge and the minimum sentence for the unarmed robbery, a class C felony, exceeded the minimum sentence for the armed robbery, a class A felony. The lower court, relying on this Court's decision in *People v Wideman*, unpublished opinion per curiam of the Court of Appeals, issued February 23, 2006 (Docket No. 257143), granted defendant's motion and resentenced him on the unarmed robbery conviction. Plaintiff now challenges the trial court's decision.

II. STANDARD OF REVIEW

We review a trial court's imposition of a sentence for an abuse of discretion. *People v Hendrix*, 263 Mich App 18, 20; 688 NW2d 838 (2004), modified in part 471 Mich 926 (2004). "[A]n abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Statutory interpretation is a question of law that is reviewed de novo on appeal. *Id.* at 253.

III. ANALYSIS

Under MCL 769.34(10), this Court must affirm a trial court's sentence that is within the appropriate guidelines range, "unless the trial court erred in scoring the guidelines or relied on inaccurate information in determining the defendant's sentence." *Id.* at 261. When the sentence is outside of the guidelines ranges, this Court must decide under MCL 769.34(11) "whether the trial court articulated a substantial and compelling reason to justify its departure from that range." *Id.* at 261-262. The principle of proportionality sets the standard "against which the allegedly substantial and compelling reasons in support of departure are to be assessed." *Id.* at 262.

MCL 777.21(1) provides for the determination of recommended minimum sentence ranges. MCL 777.21(2) provides that "[i]f the defendant was convicted of multiple offenses, subject to section 14 of chapter XI [MCL 771.14], score each offense as provided in this part." MCL 771.14(1) provides in pertinent part that "[b]efore the court sentences a person charged with a felony . . . the probation officer shall inquire into the antecedents, character, and circumstances of the person, and shall report in writing to the court." MCL 771.14(2) provides in pertinent part:

> A presentence investigation report prepared under subsection (1) shall include all of the following:

> (e) For a person to be sentenced under the sentencing guidelines set forth in chapter XVII, all of the following:
>
> (i) For each conviction for which a consecutive sentence is authorized or required, the sentence grid in part 6 of chapter XVII that contains the recommended minimum sentence range.
>
> (ii) Unless otherwise provided in subparagraph (i), for each crime having the highest crime class, the sentence grid in part 6 of chapter XVII that contains the recommended minimum sentence range.
>
> (iii) Unless otherwise provided in subparagraph (i), the computation that determines the recommended minimum sentence range for the crime having the highest crime class.

Previously, MCL 771.14(2)(e)(i) required the recommended minimum sentence range be calculated for each conviction until the Legislature amended that provision, effective October 1, 2000. *People v Mack*, 265 Mich App 122, 127; 695 NW2d 342 (2005). In light of that amendment, this Court has held that where a defendant is sentenced for multiple concurrent convictions, a presentence investigation report (PSIR) is required only for the highest crime class felony conviction. *Id.* at 128.

> Our construction of MCL 771.14(2)(e)(ii) and (iii) recognizes the Legislature's clear intent, expressed in its amendment of MCL 771.14, that, for sentencing on multiple concurrent convictions, a PSIR would only be prepared for the highest crime class felony conviction and would no longer be prepared for each of the defendant's multiple convictions. [*Id.*]

However, the instant action is distinguishable from *Mack*. Here, defendant pleaded guilty to offenses arising from separate criminal transactions, but he was sentenced using a single PSIR prepared for the highest class felony of all the separate criminal transactions. While we agree that MCL 771.14 requires preparation of a PSIR only for the highest crime class felony conviction, we believe that this rule applies separately to each separate criminal transaction. Therefore, we conclude that the trial court erred in relying on a single PSIR to sentence defendant in this case, and defendant was entitled to resentencing. However, we need not reverse because the trial court reached the right result, i.e., resentencing, albeit for the wrong reason. *People v Bauder*, 269 Mich App 174, 187; 712 NW2d 506 (2005).

Affirmed.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Bill Schuette