

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVIN RUFF,

Defendant-Appellant.

UNPUBLISHED

January 8, 2009

No. 281996

Wayne Circuit Court

LC No. 07-010023-FH

Before: Zahra, P.J., and O'Connell and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals as of right following his bench trial convictions of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced as a second habitual offender, MCL 769.10, to two years' imprisonment for the felony-firearm conviction to be followed by four years' probation for the felon in possession conviction. We remand for correction of defendant's judgment of sentence.

Defendant's sole issue on appeal is that the trial court erred in sentencing him where the sentencing information report had numerous handwritten corrections and was, therefore, "confusing, unclear and inaccurate." Unpreserved sentencing issues are reviewed for plain error affecting the substantial rights of the defendant. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

At the sentencing hearing, a bench conference was held off of the record. The prosecutor indicated that, "[p]ursuant to the Court's request, Your Honor, the People and defense counsel did, in fact, review the guidelines in this matter and we came up with zero to eleven, Your Honor." The trial court then reviewed the changes with counsel and made handwritten corrections to the report. Defendant's sentencing guidelines range changed from 12 to 36 months' imprisonment to zero to 11 months' imprisonment. The trial court stated that defendant's probationary term for the felon in possession conviction would be served following his prison term for the felony-firearm conviction.

It is difficult to ascertain what, exactly, defendant's complaint is regarding his sentence. His two-page appellate brief takes issue with the fact that the trial court made handwritten corrections, but these corrections were agreed upon by counsel, were for defendant's benefit, and significantly changed the sentencing range to allow for no jail time. The prosecutor

acknowledges that the trial court erred in ordering the sentences to run consecutively. In *People v Brown*, 220 Mich App 680; 560 NW2d 80 (1997), this Court held that a probationary sentence cannot run consecutively with a term of imprisonment for felony-firearm. *Id.* at 682-685. Instead, the sentences must run concurrently with one another. Although the trial court erred in sentencing defendant to a consecutive term of probation, the *Brown* decision also provided that the correction of the judgment of sentence to reflect that the terms are to run concurrently is ministerial in nature and does not require a full resentencing hearing. *Id.* at 685.

We, therefore, remand for the limited purpose of correcting defendant's judgment of sentence to reflect that his probationary term for felon in possession is to be served concurrently with his prison term for felony-firearm. On remand, the trial court should ensure that the Department of Corrections receives a copy of defendant's amended judgment of sentence. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Peter D. O'Connell

/s/ Karen M. Fort Hood