

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT PHILLIPP CARICO,

Defendant-Appellant.

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UNPUBLISHED  
February 24, 2009

No. 277973  
Jackson Circuit Court  
LC No. 04-001070-FH

Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

On remand from our Supreme Court for consideration as on leave granted, defendant challenges the trial court's denial of his motion for resentencing, which followed this Court's remand for an evidentiary hearing concerning defendant's sentences for his jury convictions of two counts of felonious assault, MCL 750.82, one count of felon in possession of a firearm, MCL 750.224f, and three counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was sentenced to three concurrent terms of two years' imprisonment for the felony-firearm convictions, to be served consecutively to three concurrent terms of 58 to 180 months' imprisonment for the felon in possession and felonious assault convictions. All sentences were to be served consecutively to a sentence that defendant was already serving for a prior conviction of felon in possession of a firearm. In an earlier appeal in this case, we affirmed defendant's convictions but remanded for an evidentiary hearing regarding the possible use of prior uncounseled felony convictions at sentencing. *People v Carico*, unpublished per curiam opinion of the Court of Appeals, issued December 21, 2006 (Docket No. 263155).

On remand, the trial court noted that the prosecutor had acknowledged that the presentence investigation report (PSIR) contained inaccuracies and reiterated that because enough valid prior misdemeanors and felonies had been established, the guidelines score remained the same. The trial court also concluded that the changes that the prosecutor agreed should be made would not require resentencing. On that basis, the trial court denied defendant's motion for resentencing.

We review a trial court's denial of a motion for resentencing for an abuse of discretion. *People v Puckett*, 178 Mich App 224, 227; 443 NW2d 470 (1989). We review a trial court's

scoring decision “to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score.” *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). We review questions of statutory interpretation de novo. *People v Schaub*, 254 Mich App 110, 114-115; 656 NW2d 824 (2002).

On appeal, defendant argues that the trial court erroneously relied on the existence of an operating under the influence of liquor (OUIL) third-offense conviction from 1991 when scoring the guidelines. Defendant maintains that this conviction was illegitimate because the OUIL enhancement statute at the time of the conviction required two prior OUIL convictions as predicate offenses and did not count impaired driving convictions. Defendant only had one prior OUIL conviction and two prior impaired driving convictions at the time. Defendant appears to argue that, because a jurisdictional defect existed regarding that offense, the trial court erred in using that offense to score his convictions in this case.

However, the validity of defendant’s previous OUIL convictions, or any of his convictions, lie outside the scope of our remand order; defendant cannot now raise this issue on appeal. See *K & K Constr, Inc v Dep’t of Environmental Quality*, 267 Mich App 523, 544; 705 NW2d 365 (2005) (when an appellate court remands a case with specific instructions, it is improper for a lower court to exceed the scope of the order). The purpose of this remand was to determine whether defendant had counsel during his previous felony convictions so those convictions could be used pursuant to *Moore*, not to determine whether those convictions were, in turn, properly supported by predicate convictions.

In addition, defendant cannot collaterally challenge the validity of a prior conviction for which he was represented by counsel. *People v Ingram*, 439 Mich 288, 294-295; 484 NW2d 241 (1992); *People v Howard*, 212 Mich App 366, 370; 538 NW2d 44 (1995). According to the record, counsel represented defendant for both 1991 OUIL convictions, including his 1991 OUIL third-offense conviction. Defendant is not entitled to relief.

Although defendant appears to concede that no other errors changed the initial guidelines scoring, he also argues that the trial court should have granted resentencing because the errors caused it to rely on inaccurate information in fashioning defendant’s sentence. A scoring error that does not change the minimum sentencing range recommended by the guidelines is harmless and does not warrant resentencing. *People v McGee*, 280 Mich App 680, 686; \_\_\_ NW2d \_\_\_ (2008). Defendant cannot show that any errors or changes in the PSIR required resentencing.

Affirmed.

/s/ William C. Whitbeck  
/s/ Peter D. O’Connell  
/s/ Donald S. Owens