

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHALISE MELINA GRAY,

Defendant-Appellant.

UNPUBLISHED

July 20, 2010

No. 292117

Oakland Circuit Court

LC No. 2007-213661-FH

Before: SAWYER, P.J., and BANDSTRA and WHITBECK, JJ.

PER CURIAM.

A jury convicted defendant Chalise Gray of assault with intent to do great bodily harm less than murder¹ and operating a vehicle while license suspended.² The trial court sentenced Gray as a second habitual offender³ to 36 months to 15 years' imprisonment for the assault conviction and to 110 days served for the suspended license conviction. In *People v Gray*,⁴ this Court affirmed Gray's convictions and entered an order requiring Gray to repay \$1,370 in costs and attorney fees. However, based on the need to rescore Offense Variable 10, this Court remanded for resentencing. On remand, the trial court sentenced Gray as a second habitual offender to 28 months to 15 years' imprisonment on the assault conviction and to 110 days served for the license suspension conviction. Gray now appeals as of right. We affirm. We have decided this appeal without oral argument.⁵

I. HABITUAL OFFENDER

A. STANDARD OF REVIEW

Gray argues that her prior misdemeanor conviction for attempt to assault, resist, or obstruct a police officer could not serve as the underlying offense for her habitual offender

¹ MCL 750.84.

² MCL 257.904(3)(a).

³ MCL 769.10.

⁴ *People v Gray*, unpublished opinion per curiam of the Court of Appeals, issued November 26, 2008 (Docket No. 279773).

⁵ MCR 7.214(E).

status. Gray did not preserve this issue.⁶ Accordingly, our review is for plain error affecting her substantial rights.⁷

B. APPLYING THE HABITUAL OFFENDER STATUTE

MCL 769.10(1) provides for sentencing as a second habitual offender when a person has been “convicted of a felony or an attempt to commit a felony.” MCL 750.81d(1) provides that resisting and obstructing a police officer is “a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.” Gray was convicted of an attempt to commit this felony; therefore, the trial court properly sentenced her as an habitual offender.

Nevertheless, Gray argues that we should not regard her prior misdemeanor conviction for the *attempt* as a felony for purposes of the habitual offender statute. She appears to base her argument on two premises: (1) that the longest sentence she could have received for the attempt is one year in jail under MCL 750.92, and (2) that MCL 750.7 defines felony to mean an offense for which the offender may be punished by death or imprisonment in prison, not jail. However, the habitual offender statute allows for sentencing when there is an attempt to commit a felony. Gray does not dispute that a violation of MCL 750.81d(1), the resisting and obstructing a police officer statute, is a felony. Thus, we conclude that an attempt to commit this crime is subject to habitual offender sentencing.

II. ATTORNEY FEES

A. STANDARD OF REVIEW

Gray bases her next argument on the absence of an order requiring her to pay attorney fees in the judgment issued on resentencing. She argues that the Department of Corrections should be ordered to stop taking funds for this purpose. Our review is for plain error affecting Gray’s substantial rights.⁸

B. THE OCTOBER 8, 2007 ORDER

We note that, apart from the earlier judgment of sentence, there is an October 8, 2007, order by which the trial court made provision for the Department of Corrections to collect \$1,370 for attorney fees. The judgment issued on resentencing did not upset this order. Accordingly, we conclude that the order is enforceable as written.

We affirm.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ William C. Whitbeck

⁶ See *People v Callon*, 256 Mich App 312, 332; 662 NW2d 501 (2003).

⁷ *Id.*

⁸ *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).