STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 26, 2010
v	No. 293254 Calhoun Circuit Court
JERVON SAMWON WARD, Defendant-Appellant.	LC No. 2007-000553-FH

Before: O'CONNELL, P.J., and BANDSTRA and MARKEY, JJ.

MEMORANDUM.

Defendant appeals by right from the sentence of 71 to 180 months in prison imposed on his conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted by a jury of assault with intent to do great bodily harm less than murder. At the original sentencing hearing, the trial court sentenced defendant as a second habitual offender, MCL 769.10, to 83 to 180 months in prison, with credit for 316 days.

In *People v Ward*, unpublished per curiam opinion of the Court of Appeals, issued March 24, 2009 (Docket No. 28072), this Court affirmed defendant's conviction but remanded for resentencing based on several guidelines scoring errors. At the resentencing hearing, the rescored guidelines, adjusted for defendant's status as a second habitual offender, recommended a minimum term range of 34 to 83 months. The trial court sentenced defendant to 71 to 180 months in prison, with credit for 1023 days.

Defendant correctly acknowledges that the trial court was within its discretion to impose a maximum term one and one-half times that provided for by statute when sentencing defendant as a second habitual offender. MCL 769.10(1)(a); *People v Alexander*, 234 Mich App 665, 673-674; 599 NW2d 749 (1999). Defendant also correctly notes that there is no requirement that a sentencing court state on the record that it understands that it has discretion and that it is utilizing that discretion in imposing sentence. *People v Knapp*, 244 Mich App 361, 389; 624 NW2d 227 (2001). However, defendant argues that the lack of an indication from the trial court that the trial court recognized that it had discretion in imposing sentence warrants resentencing.

We disagree. Defendant failed to raise this issue at sentencing; therefore, our review is for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). "[A]bsent

clear evidence that the sentencing court incorrectly believed that it lacked discretion, the presumption that a trial court knows the law must prevail." *Knapp*, 244 Mich App at 389. No such clear evidence appears on the record in this case; therefore, we presume that the trial court was aware that it had the discretion to impose the sentence that it did.

Defendant's sentence falls within the properly scored guidelines, and defendant does not raise any other challenge to the sentence. Thus, we are required to affirm the sentence. MCL 769.34(10).

We affirm.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Jane E. Markey