

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 13, 2012

v

ANTHONY JAMES HOFFMAN,
Defendant-Appellant.

No. 306314
Clinton Circuit Court
LC No. 10-008688-FH

Before: WHITBECK, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

Defendant was charged with child sexually abusive activity, MCL 750.145c(2), installing an eavesdropping device, MCL 750.539d, furnishing obscenity to a child, MCL 750.142, and distributing or promoting child sexually abusive activity, MCL 750.145c(3). Pursuant to a plea agreement, defendant pleaded guilty on February 7, 2011, to installing an eavesdropping device and the trial court sentenced him to six months in jail and three years probation. In lieu of granting leave to appeal, the Michigan Supreme Court remanded this case to this Court for consideration as on leave granted “of the . . . issue regarding a claimed failure of the sentencing court to comply with the procedural requirements of MCL 28.724(5) and MCL 769.1(13) before ordering defendant to register as a sex offender.” *People v Hoffman*, 491 Mich 924; 812 NW2d 769 (2012).¹ We vacate defendant’s sentence and remand for resentencing.

In pleading guilty, defendant admitted that he had placed a surveillance camera in his stepdaughter’s bedroom, but claimed that the camera was installed for the purpose of capturing images of his stepson stealing. The camera captured roughly 500 images, two of which were images of his stepdaughter’s exposed breasts. Defendant admitted that he kept all of the recorded images, but he claimed that he had never looked at them.

At sentencing on March 21, 2011, defendant objected to the prosecutor’s request that defendant be required to register as a sex offender pursuant to the Sex Offender Registration Act

¹ We acknowledge that the Legislature amended various provisions of SORA effective July 1, 2011. 2011 PA 17. Because the trial court decided the relevant issues before July 1, 2011, we analyze this case under the statutory provisions in effect when the case was decided by the trial court.

(“SORA”), MCL 28.721 *et seq.* The trial court determined that defendant was required to register as a sex offender under MCL 28.722(e)(xi), a catchall provision of SORA.

Defendant argues that the trial court failed to comply with the procedural requirements of MCL 28.724(5) and MCL 769.13 before ordering defendant to register as a sex offender. Issues of statutory interpretation are reviewed *de novo*. *People v Williams*, 483 Mich 226, 231; 769 NW2d 605 (2009).

MCL 28.724 of the SORA governs registration procedure. MCL 28.724(5) provides:

Subject to section 3, an individual convicted of a listed offense² in this state after October 1, 1995 shall register before sentencing, entry of the order of disposition, or assignment to youthful trainee status. The probation officer or the family division of the circuit court shall give the individual the registration form after the individual is convicted, explain the duty to register and to pay a registration fee, to verify his or her address, and to provide notice of address changes, and accept the completed registration for processing under section 6. The court shall not impose sentence, enter the order of disposition, or, before October 1, 2004, assign the individual to youthful trainee status until it determines that the individual’s registration was forwarded to the department as required under section 6.

Defendant argues that the trial court erred by failing to follow the SORA procedures laid out in MCL 28.724(5). The following steps must be taken if registration is required:

(1) the defendant shall register before sentencing, (2) [t]he probation officer or the family division of circuit court shall give the individual the registration form after the individual is convicted and explain the individual’s duties under SORA, and (3) [t]he court shall not impose sentence . . . until it determines that the individual’s registration was forwarded to the department [of state police] as required under [MCL 28.726]. Finally, for crimes falling under the catchall provision, MCL 769.1(13) adds additional procedural requirements regarding registration under SORA, including that the court must include the determination that the crime is a listed offense under the catchall provision, for which registration was therefore required, in the judgment of sentence. [*People v Lee*, 489 Mich 289, 296; 803NW2d 165 (2011) (internal quotation marks omitted).³]

The lower court record is devoid of any evidence establishing compliance with the SORA procedures. At a hearing on defendant’s motion to correct the judgment of sentence, the trial court said, “I had hoped that my—my transcript reflected that we actually had a signature by Mr. Hoffman before we moved forward in the proceedings, and that would have been my—my

² Defendant has not presented any arguments on appeal with regard to whether the trial court erred by determining that defendant’s conviction is a listed offense under the catchall provision of SORA.

³ *Lee* also involved the pre-amendment provisions of SORA.

preferred course of action and I don't see that that was done." The record is also silent with regard to whether defendant's duties under SORA were explained to him, *Lee*, 489 Mich at 296, and with regard to whether the registration was forwarded to the state police *before* the trial court imposed sentence. *Id.* Finally, the judgment of sentence indicates that defendant must register as a sex offender, but does not state as required by MCL 769.13 that defendant's registration was required because the offense fell within the catchall provision. *Lee*, 489 Mich at 296. Accordingly, defendant's sentence is invalid and he is entitled to resentencing. See *People v Whalen*, 412 Mich 166, 170; 312 NW2d 638 (1981) (The Supreme Court has held invalid those sentences that do not comply with essential procedural requirements). On remand, the trial court shall comply with the procedural requirements of MCL 28.724(5) and MCL 769.13 before requiring defendant to register as a sex offender.

Defendant's sentence is vacated and the case is remanded for resentencing consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ E. Thomas Fitzgerald

/s/ Jane M. Beckering