

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LARRY LEE McCALISTER,

Defendant-Appellee.

UNPUBLISHED
November 4, 1997

No. 198785
Recorder's Court
LC No. 75-002230

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

In 1979, defendant pled guilty of second-degree murder, pursuant to a plea bargain whereby the original charge of first-degree murder was dismissed. He was sentenced to life imprisonment. On appeal of right, this Court's Docket No. 55197, the conviction and sentence were affirmed in an unpublished opinion, and the Supreme Court declined defendant's petition for further review. *People v McCalister*, 417 Mich 922 (1983).

Initially proceeding in propria persona, and subsequently with the assistance of appointed counsel, defendant moved for relief from judgment, MCR 6.908, claiming that the trial court's sentence of defendant to "natural" life imprisonment was illegal and interfered with the discretion of the Parole Board to grant him parole after he had served ten calendar years pursuant to the "lifer" law, MCL 791.234(6); MSA 28.2304(6) (the ten years reflecting the version of the statute in effect when defendant was sentenced; ex post facto considerations preclude application of the 15-calendar year requirement substituted by statutory amendment). A successor to the trial judge agreed and granted resentencing, imposing a new sentence of 15 to 30 years in prison. Following the resentencing, the prosecutor sought leave to appeal, which was granted. This appeal is now being decided without oral argument pursuant to MCR 7.214(E).

At the outset, defendant presents a jurisdictional challenge to this Court's authority to review the issue presented, claiming that because the prosecutor did not seek leave to appeal the order granting resentencing, the prosecutor is limited to a review only of the propriety of the actual sentence imposed at resentencing. This argument is without merit. The grant of leave to appeal properly encompasses the

trial court's new final judgment of sentence and interlocutory orders underlying that judgment, including the order granting resentencing and subsequent denial of reconsideration. *People v Parson*, 345 Mich 727, 729; 76 NW2d 805 (1956).

A trial court has authority to resentence a defendant only where the original sentence is legally invalid. *People v Miles*, 454 Mich 90; 559 NW2d 299 (1997). Here, this Court on prior appeal of right by defendant upheld his sentence as legally valid. That the trial judge, in imposing an original life sentence, may have appended the word "natural" added nothing of legal consequence to the sentence. The word "natural" added to the word "life" is mere surplusage, and in no way renders an otherwise valid life sentence legally impermissible. *People v Rowls*, 28 Mich App 190, 193-194; 184 NW2d 332 (1970). Accordingly, defendant's original life sentence was valid and the trial court had no authority to set it aside, revise it, or otherwise correct it. *Elliott v Department of Corrections*, 343 Mich 681, 691; 73 NW2d 298 (1955). Accordingly, as the Supreme Court held in the *Elliott*, *supra*: "The life sentence imposed upon [defendant McCalister] by the court [on August 21, 1979], is still valid and in effect."

The October 7, 1996, judgment of resentence is vacated, and the original judgment of sentence (dated August 21, 1979) is reinstated.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs