

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS LEE COLLINS,

Defendant-Appellant.

UNPUBLISHED

December 16, 1997

No. 189775

Newaygo Circuit Court

LC No. 93-005607 FH

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

Defendant appeals by right his judgment of sentence, after resentencing, of 3 1/3 to 5 years' imprisonment for the offense of being a felon in possession of a firearm. MCL 750.224f; MSA 28.421(6).

Defendant contends that, at resentencing, the trial court erred in failing to reimpose a one- to five-year sentence which defendant claims was initially imposed on this offense. In the original proceedings, defendant was convicted by a jury first of the felon in possession of a firearm charge, and then of being a fourth offender. MCL 769.12; MSA 28.1084. He was sentenced to an enhanced term of four to twenty years' imprisonment, but on prior appeal of right, No. 174315, this Court peremptorily reversed the habitual offender adjudication and remanded for resentencing on the underlying offense only.

The lower court record contains an initial judgment of sentence dated April 4, 1994, which, as defendant contends, indicates that defendant was initially sentenced to one to five years' imprisonment on the underlying offense, which sentence was vacated and replaced by a four- to twenty-year sentence under the Habitual Offender Act. However, the transcript of the sentencing proceeding on March 1, 1994, contains no reference whatsoever to any sentence being imposed on the underlying charge; defendant was properly sentenced solely as an habitual offender. No claim being made that the sentence is otherwise disproportionate to the offense and the offender, no cognizable basis for appellate relief predicated on a nonexistent prior sentence has been established. Moreover, this Court's initial

* Circuit judge, sitting on the Court of Appeals by assignment.

opinion directed that defendant be resentenced, not that the original sentence be reinstated. Further, if imposed at all, that sentence was vacated when defendant was sentenced as an habitual offender. The habitual offender sentence having been vacated, the court was free to start anew.

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood