

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHANIEL ROBERTSON,

Defendant-Appellant.

UNPUBLISHED

December 22, 1998

No. 201878

Recorder's Court

LC No. 93-000567

Before: Doctoroff, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of unarmed robbery, MCL 750.530; MSA 28.798. He pleaded guilty to being an habitual offender, third offense, MCL 769.11; MSA 28.1083. The court sentenced defendant to three to fifteen years' imprisonment for unarmed robbery, but that sentence was vacated. Defendant was also sentenced to three to fifteen years' imprisonment as an habitual offender. The trial court subsequently denied defendant's motion for resentencing. He appeals as of right. We affirm.

Defendant had two previous convictions for armed robbery as well as one conviction for assault and one for possession of a firearm during the commission of a felony. He had four misconducts from his most recent prison stint. At sentencing, Judge Sapala stated that he believed defendant was a different man than he had been four years earlier when this crime was committed. The judge was "bothered" that the 1,261 days defendant had served would be credited only to his parole case. He stated that if this case had been finished three years ago, the parole board might have acted and defendant could have then begun serving this time before the sentencing date. The sentencing guidelines for unarmed robbery are five to ten years, but the judge took the above factors into consideration when he decided to vacate the unarmed robbery sentence, and sentence defendant to three to fifteen years as an habitual offender.

Defendant argues that the original sentence was invalid because it was based on a misconception of law. If a sentence is invalid, the defendant is entitled to resentencing. *People v Lino (After Remand)*, 213 Mich App 89, 99; 539 NW2d 545 (1995), overruled on other grounds, *People v Carson*, 220 Mich App 662; 560 NW2d 657 (1996). A sentence is invalid if the trial court bases

the sentence on a misconception of the law. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997).

The misconception of law in this case, defendant claims, is that the judge thought that defendant would serve only three years if he sentenced defendant to a three-year minimum term.

However, the court's stated reasons for sentencing defendant as it did do not support defendant's contention. There is no reason to think that the judge "intended" defendant to walk out of prison on any particular date, nor that the judge was under the impression that the sentence he imposed would require defendant to be released at any particular time. Therefore, we believe that the judge was not laboring under any misconception of law when he sentenced defendant to three to fifteen years for habitual offender third.

We also note that the court could have sentenced defendant to a term twice the statutory maximum for the underlying unarmed robbery. MCL 769.11(1)(a); MSA 28.1083(1)(a). The statutory maximum for unarmed robbery is fifteen years. MCL 750.530; MSA 28.798; *People v Smith*, 195 Mich App 147, 149; 489 NW2d 135 (1992). The sentence the trial court imposed is proportionate and valid and the trial court did not abuse its discretion in determining the sentence, nor err in denying defendant's motion for resentencing.

Affirmed.

/s/ Martin M. Doctoroff

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald