

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL P. DAVIS,

Defendant-Appellee.

UNPUBLISHED

July 30, 1999

No. 205892

Oakland Circuit Court

LC No. 91-107171 FH

Before: Gribbs, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

This is the third appeal before this Court concerning a sentence imposed for defendant's plea-based conviction of delivery of 50 to 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii).¹ Defendant was originally sentenced by the trial court to three to twenty years' imprisonment. The prosecution appealed and this Court remanded for resentencing under the standards announced in *People v Hill*, 192 Mich App 102; 480 NW2d 913 (1991), to allow the trial court to determine whether there were substantial and compelling reasons to depart from the statutory minimum sentence of ten years. *People v Davis*, unpublished memorandum opinion, issued November 25, 1992 (Docket No. 141911). On remand, the trial court imposed a sentence of ten to twenty years' imprisonment. Defendant appealed and this Court affirmed. *People v Davis*, unpublished memorandum opinion, issued April 12, 1994 (Docket No. 162332). Defendant sought leave to appeal to the Supreme Court which, after rendering its decision in *People v Fields*, 448 Mich 58; 528 NW2d 176 (1995), denied defendant's delayed application for leave to appeal.

Thereafter, defendant filed a motion for relief from judgment on the ground that the factors that the trial court originally relied upon in departing from the mandatory ten-year minimum sentence were consistent with many of the factors articulated by the Supreme Court in *Fields*, *supra*, and therefore, resentencing under *Fields* was appropriate. The trial court found that the *Fields* opinion constituted "a retroactive change in the law [that] may have undermined the initial sentencing and resentencing" decisions and it granted defendant's motion for relief from judgment under MCR 6.508(D). Defendant was then resentenced to six to twenty years' imprisonment. The prosecution now appeals as of right

from this sentence. We affirm the trial court's grant of defendant's motion for relief from judgment, but remand for resentencing.

The prosecution argues that the trial court improperly granted defendant's motion for relief from judgment where defendant's sentence had already been affirmed on appeal, and that the trial court abused its discretion by deviating from the mandatory ten-year minimum sentence for reasons that were neither substantial nor compelling.

Initially, we note that by failing to include the issue of whether the trial court properly granted defendant's motion for relief from judgment in the statement of the issue presented, *Meagher v McNeely & Lincoln, Inc.*, 212 Mich App 154, 156; 536 NW2d 851 (1995), and by failing to brief the argument or provide legal authority for its position, *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998), the prosecution has not properly preserved this issue for appellate review. However, because we find the issue critical to the ultimate determination of whether defendant's sentence is valid, we will review the unpreserved claim of error.

"Although the authority of the court over a defendant typically ends when a valid sentence is pronounced, the court may correct an invalid sentence after sentencing." *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). See MCR 6.429(A); *People v Mitchell*, 454 Mich 145, 176; 560 NW2d 600 (1997). A sentence will be found invalid if a trial court fails to exercise its discretion because it is laboring under a misconception of the law. *Miles, supra* at 96; *People v Whalen*, 412 Mich 166, 169-170; 312 NW2d 638 (1981).

Here, the trial court granted defendant's motion for relief from judgment pursuant to MCR 6.508(D), which provides in relevant part:

The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion

(2) alleges grounds for relief which were decided against the defendant in a prior appeal or proceeding under this subchapter, *unless the defendant establishes that a retroactive change in the law has undermined the prior decision.* [Emphasis added.]

The trial court found that the Supreme Court's recent decision in *Fields, supra*, constituted a retroactive change in the law that undermined its initial sentencing and resentencing.

We conclude that it was proper for the trial court to grant defendant's motion for relief from judgment, however, for different reasons than those cited by the trial court. After a careful reading of *Fields, supra* at 58, and *Hill, supra* 102, we are not convinced that the Supreme Court's ruling in *Fields* constituted a retroactive change in the law as contemplated by MCR 6.508(D)(2). Rather, the *Fields* Court simply adopted the test approved in *Hill* and refined the relevant factors a sentencing court may consider when deciding whether to depart from the mandatory minimum sentence. However,

we find that, when resentencing defendant to ten to twenty years, the trial court misinterpreted this Court's prior ruling in *People v Davis*, unpublished memorandum opinion, issued November 25, 1992 (Docket No. 141911), inasmuch as it read the opinion to mean that the trial court did not have authority to depart from the mandatory minimum sentence. The trial court gave the following explanation for not departing from the mandatory minimum sentence:

Mr. Davis, I've looked at the Court of Appeals opinion. They don't specifically tell me that I have to follow the mandatory minimum but they come as close to that as is possible.

In reviewing the opinion, and in reviewing the transcript I have put my reasons on the record when I initially sentenced you as to why I thought it was appropriate to deviate from the mandatory minimum sentence. Obviously that did not convince the Court of Appeals that I imposed an appropriate sentence. I think we are delaying the inevitable if I am to re-sentence you in accordance with how I sentenced you initially back in 1991.

Due to the fact that there was more than one transaction involved over a three month period of time as Mr. Stablien argues, *it's my opinion that the Court of Appeals is never going to approve a deviation from the mandatory minimum for you*. I don't agree with the law in this area, nonetheless, I am bound to follow the law. My review of the case law, *my review of the Court of Appeals opinion leaves me with the impression that I have no choice at this point* but to sentence you to the mandatory statutory minimum which is 10 years. [Emphasis added.]

We believe the correct interpretation of *Fields* is that a trial court does have authority to depart from the mandatory ten-year minimum sentence as long as it articulates substantial and compelling reasons, based on objective and verifiable factors, for departure. Thus, because the trial court was acting on a misapprehension of the law, we conclude that defendant's ten to twenty year sentence was invalid and the motion for relief from judgment was proper under MCR 6.508(D)(3)(b)(iv).² This Court will not reverse a trial court's ruling that reached the correct result, albeit for the wrong reason. *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998).

We turn next to the prosecution's argument that the trial court's decision to sentence defendant to six to twenty years' imprisonment, a downward departure from the mandatory ten-year minimum sentence, was not supported by substantial and compelling reasons. However, in view of our decision that defendant's ten to twenty year sentence was invalid, and because it is the sole function of the trial court, acting under correct principles of law, to impose a sentence, *Fields, supra* at 80; *Hill, supra* at 119, we remand for resentencing. On remand, the trial court should apply the factors enunciated in *Hill, supra*, and clarified in *Fields, supra*, to the factual findings it previously made on the record, or to any other facts the trial court deems appropriate in determining whether there are substantial and compelling reasons for departure.

Remanded for resentencing. We do not retain jurisdiction.

/s/ Roman S. Gibbs
/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder

¹ Defendant also pleaded guilty to six charges of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), but the sentences of lifetime probation imposed for those convictions are not a subject of this appeal.

² MCR 6.508(D)(3)(b)(iv) provides:

The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion

(3) alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the defendant demonstrates

(b) actual prejudice from the alleged irregularities that support the claim for relief. As used in this subrule, “actual prejudice” means that,

(iv) in the case of a challenge to the sentence, the sentence is invalid.