

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SAMUEL A. HUGHES,

Defendant-Appellee.

UNPUBLISHED

December 18, 2003

No. 242449

Wayne Circuit Court

LC No. 76-001434

Before: Fitzgerald, P.J., and Neff and White, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted the order granting defendant's motion for relief from judgment. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1976, defendant pleaded guilty of armed robbery and two counts of assault with intent to murder, and was sentenced to life imprisonment. After serving over twenty-five years in prison, he filed a motion for relief from judgment, asserting that he was sentenced under the misapprehension that he would be granted parole after a number of years. The trial court granted the motion, and this Court granted plaintiff's application for leave to appeal.

A trial court has the authority to resentence a defendant when the prior sentence is invalid. *People v Moore*, 468 Mich 573, 579; 664 NW2d 700 (2003). A sentencing judge's misapprehension of the law can be a ground for finding the sentence invalid. *Id.* Whether a sentencing court's understanding of the law is a misapprehension is a question of law to be reviewed de novo. *Id.*

In *Moore*, the defendant was sentenced to life imprisonment in 1981. The trial court denied the defendant's motion for relief from judgment, finding it lacked jurisdiction to review the sentence. This Court reversed, finding that the court had sentenced under a misapprehension regarding the defendant's eligibility for parole after ten years, and that the court had authority to resentence if it so chose. The Supreme Court reversed and reinstated the trial court's order, holding that the trial court had a proper understanding that the defendant was entitled to consideration for parole, and not actual parole. *Id.*, 580. Thus, under *Moore, supra*, failure to accurately predict the actions of the Parole Board does not constitute a misapprehension of the law that could render a sentence invalid. *Id.*

Defendant did not establish that the sentencing court acted under a misapprehension of law. At sentencing, the court referred to defendant's eligibility for parole, and it understood the grant of parole was in the hands of the Parole Board. Where the sentence was not invalid, the court erred in granting defendant's motion for relief from judgment.

Reversed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White