

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARTIN LEE BRUNER,

Defendant-Appellee.

UNPUBLISHED
November 9, 2004

No. 251946
Livingston Circuit Court
LC No. 01-012647-FH

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

The prosecution appeals by leave granted the sentence of three to ten years imposed on defendant's plea-based conviction of third-degree fleeing and eluding a police officer, MCL 750.479a(3). We reverse and remand for resentencing on that conviction, only. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty of third-degree fleeing and eluding, resisting and obstructing a police officer, and driving while license suspended, second offense, MCL 257.904(3)(b). The statutory sentencing guidelines recommended a minimum term range of nineteen to forty-three months for third-degree fleeing and eluding. Defendant objected to the scoring of Offense Variable (OV) 19, MCL 777.49, interference with the administration of justice, at ten points on the ground that he did not attempt to interfere with the progress of the case through the court system. The trial court overruled the objection and sentenced defendant as a third habitual offender, MCL 769.11, to concurrent terms of forty-three months to ten years for third-degree fleeing and eluding, one to four years for resisting and obstructing a police officer, and twenty-four days for driving while license suspended, second offense.

Defendant moved for resentencing, arguing that OV 19 was improperly scored at ten points. The trial court granted the motion, concluding that, based on the reasoning in *People v Deline*, 254 Mich App 595; 658 NW2d 164 (2002), OV 19 should be scored at zero points. The revised sentencing guidelines recommended a minimum term range of twelve to thirty-six months for third-degree fleeing and eluding. The trial court sentenced defendant to three to ten years for that offense, with credit for 669 days. Defendant's other sentences were not changed.

In *People v Barbee*, 470 Mich 283, 286-288; 681 NW2d 348 (2004), our Supreme Court held that for the purpose of scoring OV 19, interference with the administration of justice

included interfering with the duties of police officers. The *Barbee* Court overruled our decision in *Deline, supra*, to the extent that it was inconsistent.¹

We vacate the trial court's judgment of sentence entered on resentencing in part, and remand for resentencing on defendant's conviction of third-degree fleeing and eluding, only. As the trial court initially concluded, defendant's act of refusing to stop his vehicle when ordered to do so and fleeing on foot warranted the scoring of OV 19 at ten points. *Barbee, supra*. Although the trial court at the time correctly followed our decision in *Deline*, under *Barbee* the trial court's error in scoring OV 19 at zero points resulted in the incorrect calculation of the minimum term range for third-degree fleeing and eluding. Resentencing is required on that conviction. MCL 769.34(10).

Reversed in part and remanded. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Michael R. Smolenski

¹ In addition, in *People v Deline*, 470 Mich 895; 683 NW2d 669 (2004), our Supreme Court vacated our decision to the extent that it was inconsistent with *Barbee, supra*.