

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEAN ALLAN ROBINSON,

Defendant-Appellant.

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UNPUBLISHED

November 22, 2005

No. 256611

Newaygo Circuit Court

LC No. 03-008144-FC

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of seven years, three months to life for solicitation of perjury, MCL 750.157b(3)(a). We vacate defendant's sentence, and remand for resentencing on that conviction, only. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted by a jury of bribing a witness, MCL 750.122(7)(b), a felony which carried a maximum sentence of ten years, and solicitation of perjury, which carried a maximum sentence of five years.<sup>1</sup> The prosecution sought enhancement of defendant's sentence as a third habitual offender, MCL 769.11. The trial court sentenced defendant to four years, nine months to ten years for bribing a witness. The sentencing information report prepared for defendant's second conviction erroneously identified that offense as perjury rather than solicitation of perjury, and indicated that the authorized maximum sentence was life in prison. The trial court sentenced defendant to seven years, three months to life for an offense the trial court identified as solicitation of perjury. The minimum term was within the guidelines calculated for the offense of perjury.

A sentence of a minimum number of years to a maximum of life is invalid under the indeterminate sentencing statute. MCL 769.9(2); *People v Foy*, 124 Mich App 107, 110; 333 NW2d 596 (1983).

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<sup>1</sup> The offense defendant solicited, (perjury in a case in which he was charged with assault with intent to commit murder), was punishable by imprisonment for life or any term of years. MCL 750.422. Therefore, in defendant's case, the offense of solicitation of perjury carried a maximum term of five years. MCL 750.157b(3)(a).

Under the sentencing guidelines act, if a minimum sentence is within the appropriate sentencing guidelines range, we must affirm the sentence and may not remand for resentencing absent an error in the scoring of the guidelines or inaccurate information relied upon in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). A party may not raise on appeal an issue challenging the scoring of the guidelines or challenging the accuracy of the information relied on in determining a sentence which is within the appropriate guidelines range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand. MCL 769.34(10); *Kimble, supra*.

Defendant argues, and the prosecutor concedes, that he is entitled to resentencing on his conviction of solicitation of perjury.<sup>2</sup> We agree, vacate defendant's sentence of seven years, three months to life for solicitation of perjury, and remand this case for resentencing on that offense only. Defendant did not preserve his challenge to the sentence; therefore, review is for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). The sentence is invalid under the indeterminate sentencing statute. MCL 769.9(2); *Foy, supra*. Furthermore, the trial court sentenced defendant pursuant to guidelines calculated for the wrong conviction offense. As a result of relying on inaccurate information, the trial court imposed a more severe sentence than could have been imposed had the guidelines been calculated correctly. MCL 769.34(10).<sup>3</sup> Defendant has demonstrated that plain error occurred, *Carines, supra*, and that he is entitled to be resentenced for solicitation of perjury.

We vacate the sentence for solicitation of perjury and remand to the trial court for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski  
/s/ Bill Schuette  
/s/ Stephen L. Borrello

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<sup>2</sup> Defendant does not challenge his sentence for bribing a witness.

<sup>3</sup> The parties disagree on the correct scoring of the guidelines for solicitation of perjury. This dispute should be resolved in the trial court.