

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CAMERON MARC GREENBERG,

Defendant-Appellee.

UNPUBLISHED

January 22, 2009

No. 280650

Oakland Circuit Court

LC No. 06-208323-FC

Before: Murphy, P.J., and K.F. Kelly and Donofrio, JJ.

PER CURIAM.

The prosecution appeals by delayed leave granted from the trial court's second judgment of sentence. We affirm defendant's convictions, vacate the second sentence, and remand for reinstatement of his initial sentence.

I. Basic Facts and Procedural Background

Defendant pleaded guilty to three counts of first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(a). While defendant's guidelines range was 126 to 210, pursuant to a *Cobbs*¹ agreement, defendant's maximum sentence was to be capped at 12 years with the trial court to determine the minimum sentence. Before sentencing, defense counsel filed a sentencing memorandum with the trial court detailing the *Cobbs* agreement, and reiterating that the maximum sentence would be capped at 12 years and that the minimum sentence would be determined by the trial court after considering, among other things, the trial court's in-chambers conversations with the victim and her mother.

At sentencing, the trial court mistakenly stated that the agreement called for an eight-year minimum² and indicated that it would impose the sentence provided for by the *Cobbs* agreement. The trial court then sentenced defendant to 8 to 12 years' imprisonment. Defense counsel

¹ *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

² The trial court stated, "[t]here was a Cobbs' plea in this case that is eight years to twelve years . . ." A few moments later, it reiterated, "I did entertain a Cobbs' plea, that being a minimum of eight years, maximum of twelve years . . ."

clarified that the *Cobbs* agreement did *not* call for a particular minimum sentence, but instead provided that the minimum was to be set by the court. The trial court responded that it was nonetheless satisfied that an eight-year minimum sentence was appropriate given “the length of what went on here,” “the impact on this victim” and “everything taken into consideration and given the present guidelines.” Neither side objected to the sentence.

Subsequently, at an evidentiary hearing on defendant’s motion to withdraw his guilty plea, the trial court indicated that it erroneously believed that the *Cobbs* agreement provided for a minimum sentence of eight years when it initially sentenced defendant. On this basis, the trial court determined that defendant’s sentence was based on a mistake of fact and was invalid. Accordingly, the trial court sua sponte resentenced defendant to 5 to 12 years’ imprisonment.

II. Validity of Initial Sentence

On appeal, the prosecution contends that the trial court did not have authority to resentence defendant because defendant’s initial sentence was valid. We agree. Whether a trial court’s decision to resentence defendant was proper is a question of law reviewed de novo. *People v Harris*, 224 Mich App 597, 599; 569 NW2d 525 (1997). A court may not modify a valid sentence. *People v Thomas*, 447 Mich 390, 393; 523 NW2d 215 (1994). Where a sentence is invalid for some reason, the trial court has authority to order resentencing under MCR 6.429(A). “A sentence is invalid when it is beyond statutory limits, when it is based upon constitutionally impermissible grounds, improper assumptions of guilt, a misconception of law, . . . when it conforms to local sentencing policy rather than individualized facts, [or when it is based on inaccurate information].” *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). However, “an inadvertently stated sentence cannot be set aside merely on the ground that the court misspoke.” *Thomas*, *supra* at 393.

Our review of the initial sentencing transcript shows that the trial court initially was under the impression that the *Cobbs* agreement provided for a minimum sentence of eight years. However, after the trial court stated that the *Cobbs* agreement provided a sentence of 8 to 12 years, and imposed a sentence accordingly, defense counsel expressly corrected the trial court’s mistaken belief. Counsel stated, “[J]ust so the record’s clear, the Cobbs was at—the max was at twelve, but the minimum could be set by the Court.” In response, the trial court stated:

Well I’m—I’m satisfied, given the—the length of what went on here and the—the impact on this victim and all—everything taken into consideration and given the present guidelines, that the eight years represents the max/minimum that the twelve-year Cobbs would allow, which it would be two-thirds.³ And so that’s why I’m going with that. [Footnote added.]

The trial court’s response to defense counsel clearly shows that it was cured of any mistaken belief in the terms of the *Cobbs* agreement. Moreover, nothing in the record indicates that, after counsel’s clarification, the trial court continued to operate under the mistaken belief

³ The trial court was referencing the principle that a court is not permitted to impose a minimum sentence that exceeds two-thirds of the maximum sentence. MCL 769.34(2)(b).

that it was required to impose an eight-year minimum sentence. To the contrary, after counsel made clear that the *Cobbs* agreement imposed no limits on defendant's minimum sentence, the court stated it was nonetheless "satisfied" that an eight-year minimum was a suitable sentence, citing various reasons, including the ongoing nature of the crimes, the impact the crimes had on the young victim, and the guidelines range. The record plainly shows that any mistake of fact was remedied. The trial court did not sentence defendant based on inaccurate information, but rather, on accurate information.

Because we conclude that the initial sentence was valid, it follows that the trial court erred by sua sponte modifying defendant's sentence, *id.*, we vacate defendant's second sentence and remand this matter to reinstate defendant's initial sentence.⁴ *People v Whalen*, 412 Mich 166, 170-171; 312 NW2d 638 (1981).

Defendant's convictions are affirmed and his second sentence is vacated. We remand to the trial court and direct it to reinstate defendant's initial sentence of 8 to 12 years' imprisonment. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio

⁴ Given this determination, we do not consider the prosecution's second argument on appeal—whether the trial court had substantial and compelling reasons to depart downward from the guidelines when resentencing defendant.