

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KAREN SUE BILLINGS,

Defendant-Appellant.

UNPUBLISHED

October 20, 2009

No. 289536

Saginaw Circuit Court

LC No. 06-028104-FH

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted the sentence imposed on remand on her plea-based conviction of conducting a criminal enterprise, MCL 750.159j(1). We dismiss this appeal as moot. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was originally sentenced as a third habitual offender, MCL 769.11, to 72 months to 40 years in prison for conducting a criminal enterprise. In lieu of granting her delayed application for leave to appeal in Docket No. 277269, this Court remanded the case to the trial court for the appointment of appellate counsel and directed that appellate counsel “raise the issue whether a defendant can waive the appointment of appellate counsel as a plea condition imposed by the trial court.” After appellate counsel was appointed, counsel filed a delayed application for leave to appeal, which was granted (Docket No. 282131). Counsel then filed a brief on appeal raising the appointment of appellate counsel issue as well as an issue regarding the scoring of Offense Variable (OV) 12, MCL 777.32, at 25 points. Counsel also filed a motion for resentencing in the trial court raising the scoring issue. The trial court rejected defendant’s argument that OV 12 should have been rescored at one point, held that defendant should have received 10 points for OV 12, and resentenced defendant to a minimum term of 51 months, which was within the revised range of 51 to 127 months. The current appeal follows the grant of defendant’s delayed application for leave to appeal this order.

After defendant filed her brief on appeal, challenging the rescoring, this Court issued an opinion in Docket No. 282131. *People v Billings*, 283 Mich App 538; 770 NW2d 893 (2009). Inter alia, this Court took note of the resentencing, rejected defendant’s argument that OV 12 should have been rescored at one point, and upheld the rescoring of OV 12 at 10 points. Thus,

the issue raised in this appeal has already been decided. Accordingly, we dismiss this appeal as moot.

Dismissed.

/s/ Karen M. Fort Hood

/s/ David H. Sawyer

/s/ Pat M. Donofrio