

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWAYNE LEE GOODALE,

Defendant-Appellant.

UNPUBLISHED

June 15, 2010

No. 290019

Berrien Circuit Court

LC No. 2007-406660-FH

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Following a jury trial, defendant was acquitted of one count of intentional welfare fraud, MCL 400.60(1), but convicted of one count of violating MCL 400.60(2)(c) for neglecting to report information concerning a change in circumstances that would decrease the need for relief. He was sentenced to probation for one year. Defendant appeals as of right. Because we conclude that MCL 400.60(2)(c) is inapplicable to defendant's charged conduct, we vacate defendant's conviction and sentence.

I. BACKGROUND

The Department of Human Services (DHS) is authorized to provide compensation for childcare services for eligible persons to enable them to participate in education, employment readiness, training, or employment programs. Defendant and his children were authorized to receive childcare benefits. The childcare provider is responsible for keeping accurate records of a child's hours in daycare, which are verified by the parent, and bills the DHS for only those hours the child actually spends in daycare, subject to certain exceptions not applicable in this case. Defendant was the pastor of the Central Assembly of God, which ran a state-licensed daycare program in its building. Defendant's children attended the daycare program, but defendant's wife also homeschooled them at the church. For a time, defendant was responsible for submitting to the DHS the hours that his children spent in daycare. The prosecution's theory at trial was that defendant improperly sought childcare benefits for hours that his children did not actually spend in childcare, but spent in homeschooling or on vacation.

Defendant was charged with intentional welfare fraud, in violation of MCL 400.60(1), and with neglecting to report information concerning a change in circumstances decreasing the need for relief, in violation of MCL 400.60(2)(c). The jury acquitted defendant of the intentional welfare fraud count, but convicted him of the latter count.

II. APPLICABILITY OF MCL 400.60(2)(c)

The core question presented on appeal is whether MCL 400.60(2)(c) is applicable to defendant's alleged conduct. Defendant concedes that he did not challenge the applicability of MCL 400.60(2)(c) before the trial court. Therefore, this issue is unpreserved. We review unpreserved issues for plain error affecting defendant's substantial rights. *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008). "Reversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings." *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008), quoting *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

We conclude that MCL 400.60(2)(c) is not applicable to defendant's alleged conduct. Accordingly, defendant's conviction under that statute constituted plain error affecting his substantial rights. Further, because the jury acquitted defendant of intentional welfare fraud and MCL 400.60(2)(c) does not apply to defendant's alleged conduct, the plain error resulted in the conviction of an innocent person. Therefore, we vacate defendant's conviction and sentence.

Defendant was charged with over-reporting the number of hours his children actually attended the church daycare program, resulting in the receipt of increased childcare benefits. The prosecution charged defendant with separate counts under MCL 400.60(1) and (2)(c), which provide in pertinent part:

(1) Any person who by means of willful false statement or representation, . . . obtains or attempts to obtain, or aids or abets any person to obtain or attempt to obtain, (a) assistance or relief to which the person is not entitled; or (b) a larger amount of assistance or relief than that to which the person is justly entitled; . . . if the amount involved shall be of the value of more than \$500.00, be deemed guilty of a felony, and upon conviction shall be punished as provided by the laws of this state. . . . If anyone receives assistance or relief through means enumerated in this section, in which prosecution is deemed unnecessary, the state department or county departments may take the necessary steps to recover from the recipient the amount involved, plus interest at 5% per annum. . . .

(2) There is imposed upon every person receiving relief under this act either upon the person's own application or by the person's inclusion, to his or her knowledge, in the application of another the continuing obligation to supply to the department issuing the relief: (a) the complete circumstances in regard to the person's income from employment or from any other source or the existence of income, if known to the person, of other persons receiving relief through the same application; (b) information regarding each and every offer of employment for the person or, if known to him or her, of the other persons receiving relief through the same application; (c) information concerning changes in the person's circumstances or those of other persons receiving relief through the same application which would decrease the need for relief; and (d) the circumstances or whereabouts, known to the person, of relatives legally responsible for the person's support or for the support of other persons receiving relief through the same application if changes in those circumstances or whereabouts could affect the

amount of assistance available from those relatives or affect their legal liability to furnish support. Any person who shall neglect or refuse to submit to the department issuing relief the information required by this section, . . . if the amount of relief granted as a result of the neglect or refusal is \$500.00 or more, is guilty of a felony, and upon conviction shall be punished as provided by the laws of this state.

As previously indicated, defendant was acquitted of the charge relating to MCL 400.60(1). Therefore, we must determine only whether defendant's charged conduct, if proven, would establish a violation of MCL 400.60(2)(c).

In *People v Gardner*, 482 Mich 41, 50; 753 NW2d 78 (2008), our Supreme Court set forth basic principles of statutory construction:

Our goal in construing a statute is "to ascertain and give effect to the intent of the Legislature." The touchstone of legislative intent is the statute's language. "If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning and we enforce the statute as written." Accordingly, when statutory language is unambiguous, judicial construction is not required or permitted. [Citations omitted.]

MCL 400.60(2)(c) unambiguously places an affirmative duty on anyone receiving benefits under the Social Welfare Act, MCL 400.1 *et seq.*, to report any change in circumstances that would decrease the amount of benefits that person would otherwise be entitled to receive. *People v Vargo*, 139 Mich App 573, 575; 362 NW2d 840 (1984). By its plain language, MCL 400.60(2) only applies to persons receiving relief, i.e., to DHS clients or families eligible for benefits. MCL 400.60(2) states that the client's duty to supplement information begins with his application for benefits or his known inclusion in another person's application. Subsection (c) imposes a duty on such a person to report changes in his circumstances, or changes in the circumstances of other persons receiving relief through the same application, that "would decrease the need for relief." Thus, the types of changes contemplated in subsection (c) are those that might affect either the client's eligibility for benefits or the amount of authorized benefits for the client. This conclusion is supported by the DHS's Child Development and Care Application form, which explains the applicant's continuing duty to report changes in circumstances, including "changes in my employment, school/training, income, child care arrangements, name, address, phone numbers, household members, marital status, etc., and any other change which may affect my eligibility or the amount of benefits."

The evidence in this case showed that the DHS reviewed defendant's annual applications for benefits. Defendant accurately reported in those applications that his children were homeschooled. The DHS determined that defendant was eligible to receive childcare benefits and authorized a maximum number of biweekly childcare hours for which benefits were available, taking into consideration the information defendant provided on his application. The charged conduct in this case did not involve a failure to report a change in circumstances affecting either defendant's need for relief or his continued entitlement to the maximum number of authorized biweekly childcare hours, but rather it concerned the accuracy of defendant's reporting. Specifically, defendant was charged with over-reporting the number of childcare hours by improperly including among the reported hours time during which the children were

being homeschooled or were on vacation. The children's homeschooling status was not a changed circumstance; the DHS was aware when it approved defendant's application that the children were being homeschooled because defendant reported that information in the application. Similarly, the fact that the children occasionally went on vacation did not involve a change of circumstances from those that existed when defendant's application for benefits was approved. Thus, the charged conduct did not implicate MCL 400.60(2)(c), and defendant's conviction under that statute cannot stand.¹ Therefore, we vacate defendant's conviction and sentence.

In light of our decision, it is unnecessary to consider defendant's remaining issues on appeal.

Defendant's conviction and sentence are vacated.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Michael J. Talbot

¹ The charged conduct in this case more appropriately falls within the scope of MCL 400.60(1), which prohibits a person from willfully making a false statement or representation to obtain or attempt to obtain assistance or relief to which the person is not entitled, or a larger amount of assistance or relief than that to which the person is justly entitled. Thus, if defendant willfully over-reported the number of childcare hours to obtain benefits in a greater amount than he was entitled, he could be convicted under MCL 400.60(1). Defendant was also charged in this case with violating MCL 400.60(1), but the jury acquitted him of that charge.