

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRENCE LASALE BRASWELL,

Defendant-Appellant.

UNPUBLISHED

November 18, 2010

No. 293743

Wayne Circuit Court

LC No. 05-012013-FC

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

In 2006, a jury convicted defendant of assault with intent to do great bodily harm less than murder, MCL 750.84, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court originally sentenced defendant as a third habitual offender, MCL 769.11, to concurrent prison terms of 10 to 20 years for the assault conviction and 40 to 60 months for the felon in possession conviction, and a consecutive two-year term of imprisonment for the felony-firearm conviction. In a prior appeal, this Court affirmed defendant's convictions, but remanded for resentencing or an articulation of the trial court's reasons for its departure from the sentencing guidelines range for the assault conviction. *People v Braswell*, unpublished opinion per curiam of the Court of Appeals, issued January 8, 2008 (Docket No. 271210). On remand, the trial court resentenced defendant on his assault conviction to a reduced term of 7 to 20 years' imprisonment. Defendant appeals his sentence, and we affirm.

Defendant claims he is entitled to resentencing because the court erroneously scored ten points for offense variable (OV) 4 of the sentencing guidelines, MCL 777.34. This issue was decided against defendant in his prior appeal and was not raised at resentencing. Because defendant has not shown that there was a material change in the facts underlying that decision, see *Grievance Administrator v Lopatin*, 462 Mich 235, 259; 612 NW2d 120 (2000), or an intervening change in the law, see *Sumner v Gen Motors Corp (On Remand)*, 245 Mich App 653, 658; 633 NW2d 1 (2001), the law of the case doctrine precludes this Court from deciding the issue differently in this appeal. *Grace v Grace*, 253 Mich App 357, 362-363; 655 NW2d 595 (2002).

Defendant contends that the trial court improperly enhanced his maximum sentence under MCL 769.11. The trial court's decision whether to enhance defendant's sentence pursuant

to the habitual offender statute is reviewed for an abuse of discretion. *People v Mack*, 265 Mich App 122, 125; 695 NW2d 342 (2005).

Because of defendant's status as a third habitual offender, the trial court was authorized to sentence him "to imprisonment for a maximum term that is not more than twice the longest term prescribed by law for a first conviction of that offense or for a lesser term." MCL 769.11(1)(a). Sentence enhancement under the habitual offender statute is discretionary. *People v Alexander*, 234 Mich App 665, 673-674; 599 NW2d 749 (1999). Assault with intent to do great bodily harm is a ten-year felony. MCL 750.84. Thus, the trial court had discretion to sentence defendant to a maximum term of up to 20 years. "[A] trial judge commits reversible error if he or she does not recognize that he or she has discretion and therefore fails or refuses to exercise it." *People v Merritt*, 396 Mich 67, 80; 238 NW2d 31 (1976). However, the trial court is not required to "state on the record that it understands it has discretion and is utilizing that discretion." *People v Knapp*, 244 Mich App 361, 389; 624 NW2d 227 (2001). "Rather, absent clear evidence that the sentencing court incorrectly believed that it lacked discretion, the presumption that a trial court knows the law must prevail." *Id.*

Here, nothing in the record suggests that the trial court did not recognize that it had the discretion to impose a maximum term of less than 20 years. Given that defense counsel advised the court "that you have discretion to double the max in this case, but you also have the discretion to set it lower if you deem it appropriate" and the trial court's statement that it had considered the arguments of counsel before imposing sentence, it is apparent that the trial court was exercising its discretion to impose the maximum sentence permitted. Defendant shot an unarmed relative in the chest at close range for no apparent reason. Defendant has not identified any unusual circumstances that would render his sentence disproportionate. Under the circumstances, the trial court's decision to impose the maximum sentence authorized by law was not an abuse of discretion.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad