STATE OF MICHIGAN

COURT OF APPEALS

BLOOMFIELD TOWNSHIP, Plaintiff-Appellee,	UNPUBLISHED February 15, 2011
v	No. 293553 Oakland Circuit Court
JOHN MICHAEL WILLIAMS, Defendant-Appellant.	LC No. 08-008771-AR 08-008892-AR

Before: TALBOT, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

Defendant John Michael Williams appeals by leave granted the circuit court's orders affirming his plea-based convictions and sentences on four counts of being a minor in possession of alcohol (minor in possession) in violation of Bloomfield Township's Ordinance (Ordinance), § 22-370(a). On appeal, the primary question is whether the district court had the authority to sentence Williams to probation for his minor in possession convictions. We conclude that the district court did not have the authority to sentence Williams to probation for his convictions. For that reason we vacate Williams' sentences and remand this case to the district court for resentencing consistent with this opinion.

I. BASIC FACTS AND PROCEDURAL HISTORY

Williams was born in January 1988 and apparently has a history of mental health problems. In October 2007, a police officer arrested Williams for being a minor in possession in violation of Bloomfield Township's ordinances. The district court set a $100 bond for Williams with the condition that he abstain from alcohol.

In December 2007, while awaiting resolution of his minor in possession charge, police officers again arrested Williams for being a minor in possession. In addition, the officers charged Williams with disorderly conduct after he allegedly antagonized a police dog that was in a patrol car. These new charges led to a bond violation hearing. At the hearing the district court ordered Williams to submit to daily alcohol breath testing pending a new hearing.

In March 2008, the district court held a pretrial conference. At the conference, the prosecutor moved for permission to dismiss Williams' charges without prejudice so that Williams could participate in a jail diversionary program run by the community mental health department. The court determined that Williams was not a good candidate for the program and

denied the motion. The court also determined that Williams had violated his bond and decided to order new conditions. The court ordered Williams to wear a tether and permitted him to leave home only for work, school, medical appointments and Alcoholics Anonymous meetings. He also had to submit to daily alcohol monitoring.

Later that same month, a police officer pulled Williams over in the early morning hours. During the traffic stop, the officer discovered a closed container of alcohol in Williams' car. The officer cited Williams for being a minor in possession and confiscated the alcohol. Williams passed an alcohol breath test at that time. However, later that same day, Williams appeared for alcohol testing and was found to have alcohol in his system. As such, he was giving a fourth minor in possession charge.

In May 2008, Williams pleaded guilty to the four charges of being a minor in possession. In exchange, the prosecutor agreed to drop the disorderly conduct charge. The trial court sentenced Williams in June 2008. The minor in possession ordinance authorized the district court to fine Williams $100 for each offense and to order him to participate in various substance abuse services, to perform community service and to undergo substance abuse screening and assessment. Although the ordinance permitted a jail sentence for second and subsequent violations, it did not provide for jail for a first violation and did not explicitly permit a sentence of probation. Nevertheless, for each conviction, the district court sentenced Williams to 1 year of probation and fined him $100. The trial court also ordered him to refrain from using drugs or alcohol, to submit to random drug screens, to submit to a daily alcohol testing for sixty days and then to random alcohol testing thereafter, as well as other costs and conditions.

In July 2008, Williams again tested positive for alcohol. In addition, Williams was arrested in Manistee County on an alcohol related offense. While at a park, police officers discovered Williams and some other young persons who had apparently been drinking. Williams initially gave the officers a false name. And, after he tried to flee, the officers were forced to physically subdue him. He was charged with resisting and obstructing a police officer.

Williams appealed his sentences on the four original minor in possession charges to the Circuit Court in September 2008. On appeal, Williams argued that the district court should have allowed him to participate in the program offered under the Holmes Youthful Trainee Act, see MCL 762.11, was without the authority to sentence him to probation, and abused its discretion by providing excessive conditions that were not sufficiently individualized. The prosecution responded by arguing that the trial court properly exercised its discretion when it denied his request to divert him to the Holmes program. The prosecutor also stated that MCL 771.1 authorized the court to sentence Williams to probation for an ordinance violation. Finally, the prosecution argued that the trial court had the discretion to place conditions on William's probation and that the actual conditions were appropriate given Williams' recidivism.

In April 2009, the Circuit Court issued an opinion and order affirming Williams' sentences. Williams then applied for leave to appeal to this Court, which this Court granted. See *Bloomfield Twp v Williams*, unpublished order of the Court of Appeals, entered December 3, 2009 (Docket No. 293553).

II. PROBATION

A. STANDARDS OF REVIEW

Williams first argues that the district court did not have the authority to sentence him to probation for a first offense of being a minor in possession. This Court reviews de novo the proper interpretation of ordinances and statutes as questions of law. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003).

B. THE AUTHORITY TO SENTENCE TO PROBATION

It is well-settled that a trial court may only impose a sentence authorized by the Legislature. See *People v Hegwood*, 465 Mich 432, 436-437; 636 NW2d 127 (2001) (noting that Michigan's constitution vests the Legislature with the authority to provide for penalties for criminal offenses and stating that the courts only have the authority to impose a sentence within the limits set by the Legislature); *People v Drohan*, 475 Mich 140, 161; 715 NW2d 778 (2006) (stating that a trial court "may not impose a sentence greater than the statutory maximum."). As such, the district court could not sentence Williams to probation unless authorized under the township's ordinances or other statutory authority.

We shall first examine whether the relevant ordinances authorized the sentences of probation. This Court interprets ordinances using the same rules of construction that apply to statutes. *Livonia Hotel, LLC v City of Livonia*, 259 Mich App 116, 131; 673 NW2d 763 (2003). Our primary goal in interpreting an ordinance is to give effect of the legislative body that enacted the ordinance. *Warren's Station, Inc v City of Bronson*, 241 Mich App 384, 388; 615 NW2d 769 (2000). Here, Bloomfield Township promulgated an ordinance that makes it a misdemeanor for a person who is under 21 years of age to purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, to possess or attempt to possess alcoholic liquor, or have any bodily alcohol content. Ordinance, § 22-370(a). Except as otherwise provided by law or ordinance, a trial court may sentence a person convicted of a misdemeanor under Bloomfield Township's ordinances "by a fine not to exceed $500.00 and costs of prosecution or by imprisonment for a period of not more than 90 days, or both such fine and imprisonment." Ordinance, § 1-7(d). Although § 22-370(a) is a misdemeanor offense within the meaning of § 1-7(d), § 22-370 also provides a comprehensive scheme for the punishment of violations. See Ordinance, § 22-370(a)(1) to (3).[1] For that reason, § 1-7(d) does not—by its own terms—apply to a conviction under § 22-370(a). Instead, a trial court must impose a sentence within the limits provided under § 22-370.

Under § 22-370(a)(1), for a person's first conviction for violating § 22-370(a), the trial court may fine the person $100 and may order him or her to "participate in substance abuse prevention services or substance abuse treatment and rehabilitation services" and may order him

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[1] We note that the township's ordinance is substantially similar to the State Legislature's prohibition against the possession of alcohol by minors. See MCL 436.1703.

or her to "perform community service and to undergo substance abuse screening and assessment at his own expense . . . ." Ordinance, § 22-370(a)(1). The township's legislative body provided for greater punishment—including the possibility of time in jail—for second and subsequent violations of § 22-370(a). See Ordinance, § 22-370(a)(2), (3). However, it also limited the trial court's ability to sentence an offender to jail for a second or subsequent violation; in order to sentence a person to jail, the court must first find that the person has "violated an order of probation, failed to successfully complete any treatment or screening, or community service ordered by the court, or failed to pay any fine for that conviction . . . ." Ordinance, § 22-370(a)(2), (3). Thus, in order to warrant the imposition of jail time, the person being sentenced must have committed a second or subsequent violation of § 22-370(a) and must be found to have violated an order of probation—among other possible criteria. Because § 22-370(a)(2) refers to a violation of an order of probation for a second offense, it appears that the sentencing scheme recognizes that a trial court has the authority to sentence a first-time offender to probation. And, indeed, the ordinance clearly provides for such an eventuality.

Under § 22-370(c), a trial court may impose an order of probation on a first time offender:

> When an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (a) of this section pleads guilty to a violation of subsection (a) of this section, the court, without entering a judgment of guilt in a criminal proceeding, may defer further proceedings and place the individual on probation. Upon violation of a term or condition of probation or upon a finding that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt, and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this subsection shall be without adjudication of guilt and is not a conviction for purposes of subsection (a) of this section . . . .

When the entire sentencing scheme is read as a whole, it is evident that the township's legislative body provided for a possible sentence of probation involving a first-time violation of § 22-370(a). But it is also evident that it limited the use of probation for first-time offenders to the specific circumstances stated under § 22-370(c). Because the ordinance delineates the circumstances under which probation may be used for a first-time offender, it must be understood to include a negative of any other application. See *Taylor v Currie*, 277 Mich App 85, 95-96; 743 NW2d 571 (2007) (noting that, under the maxim *expressio unius est exclusio alterius*, this Court must read a statute that limits a thing to be done in a particular mode to include a negative of any other mode). Accordingly, we conclude that, when the sentencing scheme is read as a whole, it specifically excludes the imposition of probation for a first-time conviction, except under the limited circumstances stated under § 22-370(c).

Notwithstanding this, the prosecution argues that the trial court was authorized to sentence Williams to probation under MCL 771.1. This section provides that, in "all prosecutions for felonies, misdemeanors, or ordinance violations other than" certain serious crimes, the court may place the defendant on probation if "the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the

public good does not require that the defendant suffer the penalty imposed by law . . . ." MCL 771.1(1). An ordinance violation is defined to include "[a] violation of an ordinance or charter of a city, village, township, or county that is punishable by imprisonment or a fine that is not a civil fine." MCL 761.1(j)(i). Because § 22-370(a)(1) is an ordinance that authorizes the trial court to punish a first-time offender with a fine that is not a civil fine, MCL 771.1(1) would appear to authorize a trial court to sentence a first-time offender to probation. But we have already determined that the township's legislative body limited the use of probation for a first-time violation. See Ordinance, § 22-370(c). And, to the extent that MCL 771.1(1) conflicts with the sentencing scheme contemplated under the ordinance, the ordinance must prevail because it is the more specific legislation. See *Livonia Hotel*, 259 Mich App at 131 ("When two statutes or provisions conflict, and one is specific to the subject matter while the other is only generally applicable, the specific statute prevails."). Accordingly, we conclude that MCL 771.1(1) does not authorize a trial court to sentence a person for a first violation of § 22-370(a) to probation unless the trial court follows the procedures stated under § 22-370(c).

Because the trial court did not sentence Williams under § 22-370(c), it did not have the authority to impose a sentence of probation. Consequently, we must vacate the trial court's judgment of sentence for each of William's minor in possession convictions and remand this case to the district court for resentencing in compliance with § 22-370(a)(1).[2]

Vacated and remanded for resentencing consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Michael J. Kelly

[2] Given our resolution of this issue, we decline to address Williams' remaining claims of error with regard to his sentences.