

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
March 20, 2018

v

DANIEL DERSEL MYERS,  
  
Defendant-Appellant.

No. 337617  
St. Clair Circuit Court  
LC No. 14-001001-FC

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Before: GLEICHER, P.J., and BOONSTRA and TUKEL, JJ.

PER CURIAM.

In a prior appeal, this Court affirmed defendant’s armed robbery and weapons-related convictions but remanded for a hearing pursuant to *United States v Crosby*, 397 F3d 103, 117-118 (CA 2, 2005), to determine if resentencing was required by *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015), as the trial court “scored, at a minimum, [Offense Variable] OV 4 based on conduct that was not admitted by defendant or found by a jury.” *People v Myers*, unpublished per curiam opinion of the Court of Appeals, issued April 19, 2016 (Docket No. 323943), p 3. On remand, defendant challenged the points assessed for OVs 4 and 19, but the court declined to resentence defendant.

In this second appeal, defendant now contends for the first time that the trial court improperly assessed 25 points for Prior Record Variable (PRV) 1 (prior high severity felony conviction) instead of 10 points for PRV 3 (prior high severity juvenile adjudication). This argument is not properly before us and we affirm.

“[W]here an appellate court remands for some limited purpose following an appeal as of right in a criminal case, a second appeal as of right, limited to the scope of the remand, lies from the decision on remand.” *People v Kincade*, 206 Mich App 477, 481; 522 NW2d 880 (1994), citing *People v Jones*, 394 Mich 434; 231 NW2d 649 (1975). In this case, this Court remanded to the trial court “for a *Crosby* hearing under *Lockridge*.” *Myers*, unpub op at 3. A *Crosby* remand under *Lockridge* is “[a] remand for a determination of *whether* to resentence” a defendant. *Crosby*, 397 F3d at 117 (emphasis in original); see also *Lockridge*, 498 Mich at 398, quoting *Crosby*, 397 F3d at 120 (“[T]he trial court shall ‘either place on the record a decision not to resentence, with an appropriate explanation, or vacate the sentence and, with the Defendant present, resentence in conformity with’ this opinion.”).

Defendant did not raise in his initial appeal his challenge to the scoring of PRV 1 over PRV 3. Instead, he challenged only the scoring of OVs 4 and 19 based, in part, on judicial fact-finding. This Court held “at a minimum” that the trial court engaged in judicial fact-finding as to OV 4, entitling defendant to a *Crosby* remand in order for the trial court to determine whether it would have imposed a materially different sentence had it known the guidelines were advisory rather than mandatory. *Myers*, unpub op at 3. This Court did not “leave open any [other] issue . . . for further resolution on remand.” *Kincade*, 206 Mich App at 481-482. In keeping with the instructions of the remand order, the trial court considered and rejected defendant’s challenges to OVs 4 and 19 and then determined that it would not have imposed a different sentence in light of *Lockridge*. Accordingly, defendant’s new argument regarding the PRVs is outside the scope of the initial remand and we decline to address it.

We affirm.

/s/ Elizabeth L. Gleicher

/s/ Mark T. Boonstra

/s/ Jonathan Tukel