

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSHUA DEWAYNE HEADEN,

Defendant-Appellant.

UNPUBLISHED

October 21, 2021

No. 355487

Calhoun Circuit Court

LC No. 2019-002599-FH

Before: SHAPIRO, P.J., and BORRELLO and O’BRIEN, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted¹ the trial court’s amended judgment of sentence revoking his probation and sentencing defendant to 366 days to 10 years’ incarceration for assault with intent to do great bodily harm, MCL 750.84. On appeal, defendant argues that the trial court lacked authority to amend his judgment of sentence, and doing so, also violated his right to due process. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

This case originally arises out of an assault that defendant committed in August 2019. Defendant was charged and pleaded *nolo contendere* to assault with intent to do great bodily harm, and on October 25, 2019, the trial court sentenced him to 5 months’ incarceration with 68 days’ jail credit, followed by 24 months’ probation. At the sentencing hearing, defendant admitted to substance abuse, claimed that his addiction contributed to the assault, and requested participation in substance-abuse treatment. The conditions of defendant’s probation included to refrain from using alcohol and to wear a Secure Continuous Remote Alcohol Monitor (SCRAM).

¹ See *People v Headen*, unpublished order of the Court of Appeals, entered December 28, 2020 (Docket No. 355487).

On March 9, 2020, defendant pleaded guilty, as part of a *Cobbs*² agreement for a sentence of “one year and one day,” to tampering with his SCRAM in violation of his probation. At the hearing, defendant, understanding that he would be incarcerated, asked the court when his “out date” would be. The trial court informed defendant that the length of his sentence beyond the agreed-upon minimum would depend on the parole board and would be directly related to defendant’s behavior in the Department of Corrections. Defendant confirmed that he understood. On March 27, 2020, the trial court adhered to the *Cobbs* agreement and sentenced defendant to a minimum of 366 days’ incarceration with 187 days’ jail credit. However, that judgment of sentence did not include any entry for defendant’s maximum sentence.

In June 2020, the trial court entered an amended judgment of sentence that reflected that defendant’s maximum sentence was 10 years but left all other features of the judgment of sentence unchanged. Defendant now appeals, arguing that the trial court lacked the authority to correct his judgment of sentence by adding a maximum sentence.

II. ANALYSIS

“This Court reviews de novo questions of law, including the interpretation and application of our court rules.” *People v Howell*, 300 Mich App 638, 644-645; 834 NW2d 923 (2013). “We interpret court rules using the same principles that govern the interpretation of statutes.” *Id.* at 645 (quotation marks and citation omitted). “If the plain and ordinary meaning of a court rule’s language is clear, judicial construction is not necessary.” *Id.* We review de novo constitutional issues. *People v Wiley*, 324 Mich App 130, 150; 919 NW2d 802 (2018). However, because defendant’s challenge to the amended judgment of sentence is unpreserved, we review will review for plain error affecting defendant’s substantial rights. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The issue presented is whether the omission of defendant’s maximum imposed sentence on his March 27, 2020 judgment of sentence was a clerical or a substantive mistake under MCR 6.435.

MCR 6.435(A) addresses clerical mistakes in a judgment of sentence, as opposed to MCR 6.435(B), which addresses the correction of substantive mistakes. MCR 6.435(A) provides, in relevant part, that a trial court may correct clerical mistakes in judgments “arising from oversight or omission . . . at any time on its own initiative” Conversely, MCR 6.435(B) provides that a trial court may correct substantive mistakes only “[a]fter giving the parties an opportunity to be heard, and provided it has not yet entered judgment in the case”

This Court and our Supreme Court have held that to distinguish clerical from substantive mistakes in judgments of sentence, the issue to be determined is whether the mistake was caused by a clerical omission or a misstatement of what the trial court actually intended a sentence to be, as opposed to the mistake coming about because a trial court substantively misapplied the law or misunderstood the facts. See, e.g., *People v Comer*, 500 Mich 278, 293; 901 NW2d 553 (2017)

² *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

(explaining that absence of statutorily mandated lifetime monitoring in a judgment of sentence was a substantive mistake because the sentencing judge said nothing about that requirement at initial sentencing).³

Here, we conclude that the omission of defendant's maximum imposed sentence was a clerical mistake. Unlike the factual scenario presented in *Comer* where the trial court twice failed to check the box for lifetime monitoring, here, defendant had been informed of his maximum sentence when the trial court made clear its understanding that it would impose both a minimum and a maximum sentence during the sentencing hearing. Because the trial court made clear that it understood that defendant would be incarcerated for longer than the minimum sentence reached in the *Cobbs* agreement, it could never have been the trial court's intention to sentence defendant only to 366 day's incarceration with no maximum term. Thus, unlike in *Comer*, the trial court understood and conveyed to defendant the maximum penalty and its failure to place the maximum sentence on the sentence information is not a substantive misunderstanding of law, but precisely the sort of omission that MCR 6.435(A) contemplates.

Defendant also argues that he was entitled to a hearing before the trial court entered the amended judgment of sentence and that the trial court's denial of that hearing deprived him of his right to due process. Nothing within MCR 6.435(A) requires the trial court to provide defendant with a hearing before correcting a clerical mistake, and correcting such a mistake without providing a hearing does not violate due process. See *Howell*, 300 Mich App at 649. Accordingly, defendant is not entitled to relief on the issues raised in his brief.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Stephen L. Borrello
/s/ Colleen A. O'Brien

³ Distinguish *Comer* with *People v Gilbert*, unpublished per curiam opinion of the Court of Appeals, issued December 10, 2020 (Docket Nos. 351500; 351501; 351502; 351503; 351505 and 351507), p 5 (explaining that a judgment's failure to reflect that sentences were consecutive was clerical rather than substantive error because that trial court clearly recognized, on the record, that consecutive sentencing was mandated by statute). We recognize that an unpublished opinion has no precedential value, however, this Court may follow the opinion if it finds the reasoning persuasive. MCR 7.215(C)(1); *People v Green*, 260 Mich App 710, 720 n 5; 680 NW2d 477 (2004). We cite the opinion here merely to highlight the difference between a clerical error and a substantive error relative to MCR 6.435.