

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ANGELO GERROD CHANDLER, II,

Defendant-Appellant.

UNPUBLISHED

July 7, 2011

No. 297133

Muskegon Circuit Court

LC No. 06-054255-FH

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

PER CURIAM.

Defendant claims an appeal from the sentence of 13 to 30 years in prison imposed on his conviction of possession with intent to deliver 50 grams or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii). He also seeks correction of the judgment of sentence to omit the requirement that he reimburse the county for the cost of his appointed counsel. We affirm defendant's sentence, but remand for correction of the judgment of sentence.

Defendant was convicted by a jury of possession of 50 grams or more but less than 450 grams of cocaine, felon in possession of a firearm, MCL 750.224f, possession of a firearm during the commission of a felony, MCL 750.227b, and domestic violence, MCL 750.81(2). The trial court sentenced defendant as a second habitual offender, MCL 769.10, to prison terms of 17 to 30 years for possession with intent to deliver cocaine, one to seven and one-half years for felon in possession of a firearm, and two years for felony-firearm, and to time served for domestic violence.

Defendant appealed as of right. In *People v Chandler*, unpublished opinion per curiam of the Court of Appeals, issued March 17, 2009 (Docket No. 281763), this Court affirmed defendant's convictions but vacated his sentence for possession with intent to deliver cocaine and remanded for resentencing on that conviction only, on the ground that the trial court

exceeded the sentencing guidelines without providing compelling and substantial reasons for doing so.¹ *Id.* at 4.

The sentencing guidelines, adjusted for defendant's status as a second habitual offender, recommended a minimum term range of 78 months (six and one-half years) to 162 months (13½ years) for defendant's conviction of possession with intent to deliver cocaine. At the resentencing hearing, the parties did not challenge the scoring of the guidelines and the recommended term range did not change. The trial court sentenced defendant to 13 to 30 years in prison for possession with intent to deliver cocaine, with credit for 425 days served.²

On appeal, defendant argues that the minimum term of 13 years imposed on his conviction of possession with intent to deliver cocaine, while within the guidelines, is disproportionate to his circumstances and those of the offense, and that he is entitled to resentencing on this offense.

Under the sentencing guidelines act, if a minimum sentence is within the appropriate sentencing guidelines range, we must affirm the sentence and may not remand for resentencing absent an error in the scoring of the guidelines or inaccurate information relied on by the trial court in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). A party may not raise on appeal an issue challenging the scoring of the guidelines or the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand. MCL 769.34(10); *Kimble*, 470 Mich at 309.

Defendant is not entitled to resentencing. It is undisputed that defendant's minimum term is within the sentencing guidelines. Defendant does not challenge the scoring of the guidelines and does not contend that the trial court relied on inaccurate information when imposing sentence. Under these circumstances, we must affirm defendant's sentence. MCL 769.34(10); *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003).

During the resentencing hearing, the trial court indicated that the provision requiring defendant to reimburse the county for the cost of his appointed counsel would be stricken, as ordered by this Court.³ The trial court noted that *People v Dunbar*, 264 Mich App 240; 690 NW2d 476 (2004), in which this Court held that a trial court must ascertain a defendant's ability

¹ This Court also vacated that portion of defendant's judgment of sentence requiring defendant to reimburse the county for attorney fees, and remanded for reconsideration in light of defendant's ability to pay. *Chandler*, unpub op at 1.

² The amended judgment of sentence indicates that defendant was granted credit for 730 days served on his other sentences.

³ *Chandler*, unpub op at 5.

to pay before imposing a fee for appointed counsel, had been reversed,⁴ but still struck the provision requiring defendant to pay a fee for his court-appointed counsel. Defendant notes that although the trial court struck the provision, the provision still appears on the amended judgment of sentence. Defendant maintains that he is entitled to have the amended judgment of sentence corrected to properly reflect the trial court's ruling. We agree.

MCL 769.1k(b)(iii) authorizes, but does not require, a trial court to order a defendant to repay the costs of providing a court-appointed attorney. During the initial sentencing hearing in this case, the trial court ordered defendant to repay those costs, but did not determine defendant's ability to do so, as required by *Dunbar*, the law in effect at the time. This Court vacated that portion of the judgment of sentence, and remanded for reconsideration of defendant's ability to pay. *Chandler*, unpub op at 5. On remand, the trial court recognized that *Dunbar* had been reversed, and that that fact might support an argument for retaining the reimbursement requirement, but nevertheless omitted the reimbursement requirement.

Contrary to plaintiff's argument, the law of the case doctrine or an exception thereto is inapplicable in this case. On remand, the trial court acknowledged that the law had changed and that an argument could be made that the reimbursement requirement could be included in the judgment of sentence, but exercised its discretion and omitted the requirement. However, for reasons that are not clear, the requirement was included in the amended judgment of sentence. Defendant is entitled to have the judgment corrected to omit this requirement.

We affirm defendant's sentence for possession with intent to deliver cocaine, but remand for the ministerial correction of the judgment of sentence to omit the requirement that defendant reimburse the county for the cost of his appointed counsel. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Peter D. O'Connell
/s/ Donald S. Owens

⁴ In *People v Jackson*, 483 Mich 271; 769 NW2d 630 (2009), our Supreme Court reversed *Dunbar*, and held that an assessment of a defendant's ability to pay a fee for court-appointed counsel must be done only once the payment requirement is enforced. *Id.* at 275.