

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY FAISON,

Defendant-Appellant.

UNPUBLISHED

July 19, 2011

No. 298581

Wayne Circuit Court

LC No. 89-000621-FC

Before: TALBOT, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Stanley Faison challenges the May 10, 2010, amended judgment of sentence, which indicates that he was sentenced in February 1991 to concurrent prison terms of 50 to 100 years each for plea-based convictions of second-degree murder¹ and assault with intent to do great bodily harm less than murder.² We remand for correction of the judgment of sentence.

In May 1989, a jury convicted Faison of second-degree murder and assault with intent to do great bodily harm less than murder. In June 1989, the trial court sentenced him to prison terms of 40 to 80 years for the murder conviction and 80 months to 10 years' imprisonment for the assault conviction, but then immediately vacated those sentences and sentenced Faison to 50 to 100 years' imprisonment as a fourth habitual offender.³ In an earlier appeal, this Court determined that the enhanced sentence was improper and remanded the case for resentencing.⁴ On remand, the trial court resentenced Faison to life in prison. A February 1991 judgment of sentence indicated that Faison had pleaded guilty to being a fourth habitual offender and was sentenced to life in prison.

¹ MCL 750.317.

² MCL 750.84.

³ MCL 769.10.

⁴ *People v Faison*, unpublished opinion per curiam of the Court of Appeals, issued November 7, 1990 (Docket No. 120520), citing *People v Moore*, 432 Mich 311; 439 NW2d 684 (1989); *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

The judgment of sentence was amended several times between 1993 and 2009. All of the amended judgments erroneously indicated that Faison had pleaded guilty to second-degree murder and assault with intent to do great bodily harm less than murder, and that he had been sentenced to prison terms of 50 to 100 years for each conviction. An October 2009 amended judgment indicated that Faison had pleaded guilty to the charges and was sentenced as a fourth habitual offender on February 14, 1991, to concurrent prison terms of 50 to 100 years for each conviction. Under the “Court recommendation” section in the amended judgment, the trial court added “Amended jail credit, sentence date & date sentence begins 09-11-09.” The Department of Corrections sought clarification as the recommendation indicated that Faison’s sentence began on September 11, 2009, which conflicted with the stated sentencing date of February 14, 1991. Faison was present when the trial court held a hearing in May 2010. The parties agreed that the trial court simply needed to correct the recommendation to show that Faison’s sentence began on February 14, 1991. The court entered another amended judgment indicating that Faison had pleaded guilty to the murder and assault offenses and had been sentenced as a fourth habitual offender on February 14, 1991, to concurrent prison terms of 50 to 100 years for each conviction.

Faison now contends that he is entitled to resentencing because the trial court did not provide him with an opportunity for allocution at the May 2010 hearing. Although we disagree with Faison’s argument that he was entitled to allocution, we find that it is necessary to remand this case for entry of yet another amended judgment of sentence.

At sentencing, the court must give a defendant, his lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in passing sentence.⁵ “This directive permits a defendant to speak in mitigation of the sentence,”⁶ and requires that the court give the defendant an opportunity to allocute if he chooses to do so.⁷ Strict compliance with this rule is required and the failure to comply requires resentencing.⁸ The right of allocation does not arise when a defendant is not actually resentenced.⁹ When a case is remanded with instructions to impose a particular sentence and the matter is handled in open court on the record, the defendant is not actually resentenced. Rather, the trial court is merely performing a ministerial task and the defendant is not entitled to allocute because nothing he could say could possibly affect the sentence.¹⁰

Faison’s sentence was not at issue at the May 10, 2010, hearing and the trial court never passed sentence. It merely amended a previously entered judgment to correct any confusion

⁵ MCR 6.425(E)(1)(c).

⁶ *People v Petty*, 469 Mich 108, 119; 665 NW2d 443 (2003).

⁷ *People v Petit*, 466 Mich 624, 628; 648 NW2d 193 (2002).

⁸ *People v Wells*, 238 Mich App 383, 392; 605 NW2d 374 (1999).

⁹ *People v Strunk*, 172 Mich App 208, 211; 431 NW2d 223 (1988).

¹⁰ *People v Foy*, 124 Mich App 107, 112; 333 NW2d 596 (1983). See also *Strunk*, 172 Mich App at 211; *People v Mouat*, 194 Mich App 482, 487; 487 NW2d 494 (1992).

caused by a recommendation in order to clarify that Faison's sentence initiated on February 14, 1991, as specified in the sentence portion of the October 2009 judgment. Because the trial court was not passing sentence and Faison did not contest the decision to amend the judgment of sentence to clarify the date his sentences began, Faison was not entitled to allocution and his right of allocution was not violated.

We note, however, that the May 10, 2010, amended judgment of sentence continues to erroneously indicate Faison's actual sentences. As conceded by the prosecutor, Faison was sentenced to life in prison in February 1991, not to 50 to 100 years' imprisonment. Accordingly, we remand for entry of an amended judgment of sentence to reflect that on February 14, 1991, Faison was sentenced as a fourth habitual offender to life in prison, not to 50 to 100 years for each conviction. The amended judgment should reflect that Faison was convicted by a jury, not by a guilty plea.

Remanded solely for correction of the judgment of sentence in accordance with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Joel P. Hoekstra

/s/ Elizabeth L. Gleicher