STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 18, 2011
v	No. 298703 Wayne Circuit Court
ANTHONY RALPH MATTISON, Defendant-Appellant.	LC No. 07-006223-FC

Before: WILDER, P.J., and CAVANAGH and DONOFRIO, JJ.

PER CURIAM.

In November 2007, a jury convicted defendant of five counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) and (b). The trial court sentenced defendant to concurrent terms of 15 to 30 years' imprisonment. In a prior appeal, this Court affirmed defendant's convictions, but vacated his sentences and remanded "for resentencing and correction of the presentence report." *People v Mattison*, unpublished opinion per curiam of the Court of Appeals, issued May 21, 2009 (Docket No. 283212), slip op at 1, 8. On remand, the trial court resentenced defendant to five concurrent terms of 135 months' to 30 years' imprisonment. Defendant appeals as of right. Because defendant did not show that the trial court based his sentence on a guidelines scoring error or inaccurate information, the trial court properly sentenced defendant within the statutory guidelines range, and we affirm.

In defendant's original appeal, among other issues, he challenged the trial court's scoring of offense variables (OV) 11 and 13. *Mattison*, slip op at 5-6. This Court affirmed the trial court's assignment of 50 points for OV 13, MCL 777.43, but found plain error in the trial court's scoring of 50 points for OV 11, MCL 777.41, explaining as follows:

> MCL 777.41(1)(a) provides that 50 points are to be scored if "[t]wo or more criminal sexual penetrations occurred." In scoring OV 11, a trial court may not count a sexual penetration that formed the basis for the conviction when that offense is "the sentencing offense." MCL 777.41(2)(c). All other "sexual penetrations of the victim by the offender arising out of the sentencing offense" should be scored. MCL 777.41(2)(a). The phrase "arising out of" suggests "a causal connection between two events of a sort that is more than incidental." *People v Johnson*, 474 Mich 96, 101; 712 NW2d 703 (2006). "Something that 'aris(es) out of,' or springs from or results from something else, has a connective

> relationship, a cause and effect relationship, of more than an incidental sort with the event out of which it has arisin [sic]." *Id.* In this case, the victim testified that defendant engaged in sexual activity with her on numerous occasions, but did not testify that defendant engaged in more than one penetration during a single episode. Therefore, there was no evidence that two or more sexual penetrations arose, sprung, or resulted from a single sentencing offense. Accordingly, the 50-point score for OV 11 constituted plain error.
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> If OV 11 is correctly scored at zero points, defendant's total OV score decreases from 105 to 55 points. This scoring adjustment moves defendant from OV level VI (100+ points) to OV level III (40 to 59 points), and lowers defendant's guidelines range from 135 to 225 months to 81 to 135 months. MCL 777.62. Thus, the plain scoring error affects defendant's substantial rights because it affects the appropriate guidelines range. Defendant is entitled to resentencing. [*People v Francisco*, 474 Mich 82, 88-92; 711 NW2d 44 (2006)]. On remand, the trial court shall sentence defendant on current and correct information meaning that any and all OV scoring errors must be corrected in order for the trial court to sentence defendant using the appropriate guidelines range. [*Id.*, slip op at 5-6.]

The Court also briefly addressed defendant's argument that "the trial court failed to correct inaccurate information in his presentence report."[1]

In April 2010, the trial court held a resentencing hearing. Defense counsel apprised the trial court of defendant's lack of prison misconduct tickets and significant participation in prison activities, such as his successful completion of a "beginning legal research class," his work as a library clerk, his "responsibility in dealing with a number of issues with the prison staff," and his positions as "a block rep . . . [and] part of the library committee." Defense counsel urged the trial court to "sentence [defendant] at the midpoint of the guidelines," as the court had initially,

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[1] With respect to inaccuracies in the presentence information report, this Court observed:

> At sentencing, defendant challenged the information in the Marriage section of the report that implied that he was simultaneously married to two women. He also challenged the assessment of attorney fees, noting that he had retained counsel. The trial court ordered that the Marriage section be corrected, and acknowledged that the assessment of attorney fees was inaccurate. In addition, the prosecutor noted that defendant was convicted of five counts of first-degree CSC, but the Current Conviction(s) section indicates that defendant was convicted of six counts. These corrections are not reflected in the copy of the presentence report that was forwarded to this Court. Based on the record, the prosecutor concedes, and we agree, that the presentence report should be corrected to reflect the modifications that were identified at sentencing. On remand, the trial court shall make the factual modifications that were raised at sentencing. [*Id.*]

or "consider going below the midpoint of the guidelines." The prosecutor asked the trial court to impose concurrent sentences at "the high end of" the 81- to 135-month guidelines range identified by this Court. The trial court sentenced defendant as follows:

> Well, please understand that the focus here should not be on the midpoint of the guidelines, but that the guidelines that I did happen to impose came to the midpoint but only because I thought that it was necessary to impose a significant sentence in this case. And I still am of that mind. Because as indicated by the prosecutor, I just recall the facts of this case, I recall the testimony of the young lady here, the daughter, and I just thought that the behavior in this case by [defendant] was just totally unbelievable and . . . it was just horrific, in so many words.
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> I will sentence him to the minimum of 135 months and a maximum of 360 months.
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> And, again, that is at the high end of what the guidelines are now. We all agree . . . that they are 81 to 135 months. And I think that's what the Court of Appeals also indicated in the opinion that they sent back in correcting the OV-11 . . . . But that will be the sentence of the Court.[2]

Defendant contends that the terms of imprisonment imposed at resentencing, although within the statutory guidelines range, qualify as disproportionate sentences, in light of defendant's positive achievements in prison. Review of this issue obligates us to interpret MCL 769.34(10). This Court "review[s] de novo as a question of law the interpretation of the statutory sentencing guidelines." *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). When construing the meaning of the statutory language comprising the sentencing guidelines, the Court must ascertain and give effect to the Legislature's intent. *People v Pasha*, 466 Mich 378, 382; 645 NW2d 275 (2002). "The first step in that determination is to review the language of the statute itself." *Id.* (internal quotation and citation omitted). If the statutory language is plain and unambiguous, "we presume that the Legislature intended the meaning clearly expressed," *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999), and "no further construction is necessary or allowed to expand what the Legislature clearly intended to cover." *Pasha*, 466 Mich at 382.

The Michigan Legislature instructed in MCL 769.34(10):

> *If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence*. A party shall

[2] At the resentencing hearing, the trial court also expressed that it had made the changes to defendant's presentence report (PSIR) as ordered by this Court in *Mattison*, slip op at 7, and would forward a corrected copy to the Department of Corrections.

> not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals. [Emphasis added.]

The emphasized language clearly and unambiguously mandates that this Court affirm a sentence that comes within "the appropriate guidelines sentence range . . . absent an error in scoring the sentencing guidelines" or the sentencing court's reliance on inaccurate information in formulating the defendant's sentence. *Endres*, 269 Mich App at 417. Here, the parties and the trial court agreed, in light of this Court's guidance in *Mattison*, slip op at 6, that the proper guidelines range represented 81 to 135 months.[3] See MCL 777.62 (setting forth that for class A offenses, sentences falling in the grid for OV level III and prior record variable level C merit a sentence within 81 to 135 months). Defendant did not raise at the resentencing hearing below, nor has he raised in this Court, a contention that the trial court crafted its sentence on the basis of inaccurate information or that a guidelines scoring error existed. Although defendant complains that the trial court did not take sufficient account of his good behavior in prison, he does not connect his recent prison record with a purported guidelines scoring error or an assertion that the trial court resentenced defendant on the basis of inaccurate information. Under these circumstances, MCL 769.34(10) directs us to affirm defendant's sentence.

Defendant has filed a 50-page pro se Standard 4 brief pursuant to Administrative Order 2004-6, Standard 4. Apart from defendant's discussion of his resentencing on pages 20 to 26 of the Standard 4 brief, the remainder of the brief references alleged errors that occurred in the course of his original trial and sentencing. The scope of this appeal is limited to the resentencing proceeding. *People v Jones*, 394 Mich 434, 435-436; 231 NW2d 649 (1975). Thus, most of defendant's Standard 4 brief goes beyond the scope of this appeal. Accordingly, we decline to address defendant's Standard 4 brief, but for the portion devoted to his resentencing.[4]

The portion of defendant's Standard 4 brief devoted to his resentencing primarily echoes the brief filed by his appellate counsel, which fails to establish any entitlement to relief. Defendant also asserts that the trial court was required to forward a corrected copy of the PSIR to the Department of Corrections (DOC). We agree that defendant is entitled to have a corrected copy of his PSIR forwarded to the DOC. MCL 771.14(9); *People v Uphaus (On Remand)*, 278 Mich App 174, 182; 748 NW2d 899 (2008). Here, however, the trial court announced its intent

[3] Although defense counsel asserts that the trial court did not prepare a corrected copy of the SIR, he does not dispute that all parties and the trial court proceeded with the proper understanding that the guidelines range was 81 to 135 months.

[4] Nearly all of the issues raised in defendant's Standard 4 brief were previously raised in a Standard 4 brief filed in defendant's prior appeal, and were previously rejected by this Court. *Mattison*, slip op at 7-8.

to forward a corrected copy to the DOC. Thus, we conclude that further relief is not warranted.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio