

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 12, 2013

v

DONTAYE LAMONTE JONES,

Defendant-Appellant.

No. 312510
Saginaw Circuit Court
LC No. 10-034468-FH

Before: WHITBECK, P.J., and WILDER and RONAYNE KRAUSE, JJ.

PER CURIAM.

In the instant case, defendant Dontaye Lamonte Jones was convicted by a jury of carrying a concealed weapon (CCW), MCL 750.227, felon in possession of a firearm, MCL 750.224f, resisting or obstructing a police officer, MCL 750.81d, receiving or concealing a stolen firearm, MCL 750.535b, and three counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant appeals as of right from the amended judgment of sentence. We remand for the purpose of correcting the judgment of sentence.

Defendant committed the above crimes while he was on free on bond, in connection with an unrelated unarmed robbery case. Defendant ultimately was found guilty in the unarmed robbery case and then a week later, he was found guilty in the instant case.

Defendant was sentenced in both cases on the same day. In the robbery case, defendant was sentenced as a fourth habitual offender, MCL 769.12, to 200 months to 50 years. In the instant case, the trial court initially sentenced defendant to concurrent prison terms of 76 months to 18 years for CCW, felon in possession of a firearm, and receiving or concealing a stolen firearm, and 76 months to 15 years for resisting or obstructing a police officer, to be served consecutively to three concurrent two-year terms for felony-firearm.

Defendant appealed, and in *People v Jones*, unpublished per curiam opinion of the Court of Appeals, issued February 23, 2012 (Docket Nos. 301649 and 301651), this Court remanded for resentencing. The trial court resentenced defendant to concurrent prison terms of 45 months to 18 years for CCW, felon in possession of a firearm, and receiving or concealing a stolen firearm, and 45 months to 15 years for resisting or obstructing a police officer. Defendant's sentence for CCW was to run concurrently with the sentences for felony-firearm; defendant's remaining sentences were to run consecutively to the sentences for felony-firearm. The trial

court's comments at the hearing made it clear that defendant's sentences in this case still were to be served consecutively to his robbery sentence.

However, the amended judgment of sentence did not reflect the reduction of defendant's minimum sentences for his convictions of CCW, felon in possession of a firearm, resisting or obstructing a police officer, and receiving or concealing stolen firearm from 76 months to 45 months. The amended judgment of sentence also omitted language indicating that the sentences in the instant case were to be served consecutively to the sentence in the unarmed robbery case. The Department of Corrections sent a letter to the trial court requesting clarification on the issue of consecutiveness. As a result, the trial court issued a corrected judgment of sentence indicating that the sentences were to be served consecutively to the sentence in the robbery case. The corrected judgment of sentence did not change the minimum terms imposed on the non-felony-firearm cases.

Defendant first argues that the trial court erred in failing to enter a judgment of sentence that reflected the reduced minimum sentences of 45 months for the convictions of CCW, felon in possession of a firearm, resisting or obstructing a police officer, and receiving or concealing a stolen firearm.¹ We agree.

The corrected judgment of sentence entered by the trial court following an inquiry from the Department of Corrections did not reflect that the minimum sentences for defendant's convictions of CCW, felon in possession of a firearm, resisting or obstructing a police officer, and receiving or concealing a stolen firearm were reduced on resentencing. Failure to correct this error would result in defendant serving minimum terms longer than those actually imposed, and would seriously affect the fairness of the judicial proceeding. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Defendant is entitled to a remand for entry of a corrected judgment of sentence.

Defendant next argues that the addition of language to the corrected judgment of sentence reflecting that the sentences in the instant case were to be served consecutively to the sentence in the unarmed robbery case violated the prohibition against double jeopardy because it subjected him to multiple punishments for the same crime. We disagree.

Both the United States and Michigan Constitutions prohibit subjecting a defendant to multiple punishments for the same crime. US Const, Am V; Const 1963, art 1, § 15; *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004). We review de novo issues of double jeopardy. *People v Colon*, 250 Mich App 59, 62; 644 NW2d 790 (2002).

A court may correct an invalid sentence but may not modify a valid sentence "except as provided by law." MCR 6.429(A); *Miles*, 454 Mich at 96.

MCR 6.435(A) provides:

¹ The prosecution concedes the error.

Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party, and after notice if the court orders it.

At the resentencing hearing, the trial court did not restate defendant's sentences in their entirety but instead only indicated the changes that were to be made. The trial court did not indicate any changes to the requirement that defendant's sentence for CCW be served concurrently to his sentences for felony-firearm or to the requirement that defendant's sentences in this case be served consecutively to the sentence in the unarmed robbery case. The corrected judgment of sentence did not change or increase defendant's sentences but, instead, merely corrected a clerical error. Thus, defendant was not subject to multiple punishments in violation of double jeopardy.

Lastly, defendant argues that the trial court erred by making his sentences in this case consecutive to his unarmed robbery sentence. We disagree.

This Court reviews a trial court's decision to impose consecutive sentences for an abuse of discretion. *People v St John*, 230 Mich App 644, 646; 585 NW2d 849 (1998). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008). However, to the extent the imposition of consecutive sentences involves the interpretation of a statute, our review is de novo. *People v Gonzalez*, 256 Mich App 212, 229; 663 NW2d 499 (2003); *People v Spann*, 250 Mich App 527, 529; 655 NW2d 251 (2002).

"In Michigan, concurrent sentencing is the norm, and a court may impose consecutive sentences only if authorized by statute." *St John*, 230 Mich App at 646. On appeal, defendant concedes that MCL 768.7b² authorized the trial court in the instant case to impose consecutive sentences. Thus, because the trial court's decision was supported by the statute, it did not abuse its discretion, and we find no merit to defendant's position.

Defendant further argues that the trial court abused its discretion because the resulting sentencing was not proportional. However, when consecutive sentences are proportionate standing alone, their consecutive nature will not render them excessive. *Id.* at 649; *People v Warner*, 190 Mich App 734, 736; 476 NW2d 660 (1991). Instead, this Court's analysis is confined to determine "whether *each* sentence is proportionate." *St John*, 230 Mich App at 649 (emphasis added).

² MCL 768.7b(2)(a) provides that "if a person who has been charged with a felony, pending the disposition of the charge, commits a subsequent offense that is a felony, upon conviction of the subsequent offense . . . the sentences for the prior charged offense and the subsequent offense may run consecutively." Thus, the situation of defendant committing the subsequent felonies of the instant case, while the disposition of his earlier unarmed robbery charge was still pending, clearly falls under the statute.

For the sentences at issues in this appeal, the trial court imposed minimum sentences of 45 months, in addition to the two-year terms for the felony-firearm convictions. These sentences fell within the sentencing guidelines range. Therefore, these sentences are not subject to general proportionality challenges, *People v Pratt*, 254 Mich App 425, 429-430; 656 NW2d 866 (2002), and defendant cannot establish how the trial court abused its discretion.

Remanded for entry of an amended judgment of sentence reflecting the imposition of 45-month minimum sentences for defendant's convictions of CCW, felon in possession of a firearm, resisting or obstructing a police officer, and receiving or concealing a stolen firearm. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder

/s/ Amy Ronayne Krause