

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TYRONE EUGENE BELTON,

Defendant-Appellee.

UNPUBLISHED
December 6, 1996

No. 184896
LC No. 88-012996

Before: Saad, P.J., and Holbrook, Jr., and G.S. Buth,* JJ.

PER CURIAM.

In 1989, defendant was convicted of delivery of 225 to 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii), and sentenced to serve ten to thirty years in prison. After an unsuccessful appeal to this Court, defendant filed a motion for relief from judgment, arguing that his sentence should be vacated because the trial court was under the mistaken impression that factors existing at the time of sentencing were not sufficiently compelling to justify a departure under the mandatory sentencing scheme of MCL 333.7401; MSA 14.15(7401). The trial court issued an opinion and order summarily dismissing the motion pursuant to MCR 6.504(B)(2). Nearly seventeen months later, defendant filed a motion for reconsideration of the trial court's decision denying postappeal relief. The motion was granted and defendant was resentenced to serve six to ten years in prison. Plaintiff's application for leave to appeal was granted by this Court.

The trial court erred in granting defendant's motion for reconsideration. By its terms, MCR 6.504(B)(2) authorizes a trial court judge to "summarily dismiss" a postappeal motion for relief from judgment if it plainly appears from the record that the defendant is not entitled to relief. The grounds for relief are outlined in MCR 6.508(D). Upon summary dismissal, a motion for reconsideration may be filed within twenty-one days after service of the order. MCR 6.504(B)(3). It is undisputed in this case that defendant's motion for reconsideration was filed almost seventeen months after defendant was served with the trial court's order denying the motion for relief from judgment. The trial court held that it had the authority to reconsider the issue despite the delay because its initial decision did not constitute a

* Circuit judge, sitting on the Court of Appeals by assignment.

summary dismissal. The record, however, belies this conclusion. In the opinion and order denying defendant's motion for relief from judgment, the trial judge expressly indicated that the motion was being summarily dismissed pursuant to MCR 6.504(B)(2). Because defendant's motion for reconsideration was not filed within the twenty-one day period required by the court rule, the trial court was without authority to consider the motion.

In arguing for affirmance, defendant claims that, because he was released on parole in June 1995, reinstatement of his original sentence would deprive him of due process of law. Defendant relies solely on *People v Gregorczyk*, 178 Mich App 1; 443 NW2d 816 (1989), in support of this argument. We find defendant's reliance on *Gregorczyk* to be misplaced given that subsequent panels of this Court have strictly limited *Gregorczyk* to its facts, see, e.g., *People v Lamb (After Remand)*, 201 Mich App 178, 180; 506 NW2d 7 (1993), and those facts are clearly distinguishable from the case presently before us. See *Harper v Dep't of Corrections*, 215 Mich App 648, 650-651; 546 NW2d 718 (1996). Notwithstanding defendant's release on parole, reinstatement of his original valid sentence will not deprive him of due process of law.

The trial court's order resentencing defendant is vacated, and defendant's original prison term of ten to thirty years is reinstated.

/s/ Henry W. Saad

/s/ Donald E. Holbrook, Jr.

/s/ George S. Buth