

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LESLEY DON AIKINS,

Defendant-Appellant.

UNPUBLISHED

June 20, 1997

No. 186214

Genessee Circuit Court

LC No. 95-051568 FC

Before: Reilly, P.J., and Wahls and N.O. Holowka,* JJ.

PER CURIAM.

Defendant pleaded guilty to second-degree murder, MCL 750.317; MSA 28.549. During the initial sentencing, the trial court stated that it was sentencing defendant to “a minimum term of not less than 23 years, nor more than 25 years.” Less than twenty minutes later, the trial court stated that it had made a mistake and that it was sentencing defendant to a term of twenty-three to fifty years’ imprisonment. Defendant appeals as of right. We remand for further proceedings.

Defendant argues that the trial court lacked authority to alter its sentence. The record is insufficient to decide this issue. In modifying its sentence, the trial court stated:

All right, we’re back on the record of the People versus Leslie [sic] Aikins and we’ve got Mr. Aikins up in the holding room, and I understand he can hear the Court. I’ve got Mr. Farah, Ms. McLaren in Court and I realized after everybody left the Court room that the Court made a mistake on the maximum, and the reason the Court made a mistake is because, as I was giving the sentence, I filled out the paperwork and I realized I had misspoke myself.

So, I’m correcting the sentence right now which should have been that the Court would give him a minimum term of not less than 23 years and a maximum term not to exceed 50 years. That sentence should begin today, May 19th, 1995, with credit

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

for 167 days, and I think the Court misspoke itself, but I'm making that correction at this time.

The court rules authorize trial courts to alter their verdicts prior to entry of judgment based on a substantive mistake. MCR 6.435(B); *People v Jones*, 203 Mich App 74, 82; 512 NW2d 26 (1993). The notes to MCR 6.435(B) state:

A prison sentence entered on a judgment that is erroneous because the judge relied on mistaken facts (for example, confused codefendants) or made a mistake of law (for example, unintentionally imposed a sentence in violation of the *Tanner* rule) is a substantive mistake and is correctable by the judge under subrule (B) until the judge signs the judgment, but not afterwards.

Similarly, MCR 2.602(B)(1) states that a judgment or order is entered when the court signs it.

A court speaks through written judgments and orders rather than oral statements or written opinions. *Jones, supra*, p 82. Accordingly, the critical factor here is when the trial court signed its judgment. Upon remand, the trial court should reconsider defendant's motion for resentencing. If the trial court did not realize its mistake until after signing a judgment of sentence that sentenced defendant to a term of twenty-three to twenty-five years' imprisonment, then the court erred in setting aside the valid maximum term of defendant's sentence. *People v Thomas*, 447 Mich 390, 393; 523 NW2d 215 (1994); *People v Dotson*, 417 Mich 940; 331 NW2d 477 (1983). In that case, defendant must be resentenced in accordance with *Thomas, supra*. If, on the other hand, the trial court never signed a judgment of sentence which provided for a term of twenty-three to twenty-five years' imprisonment, then it may deny defendant's motion. MCR 6.435(B); see *People v Bingaman*, 144 Mich App 152, 158-159; 375 NW2d 370 (1984).

Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly

/s/ Myron H. Wahls

/s/ Nick O. Holowka