

Court of Appeals, State of Michigan

ORDER

People of MI v Ronald Mark Draughn

Docket No. 279041

LC No. 85-005287-01

Kurtis T. Wilder
Presiding Judge

Brian K. Zahra

Karen M. Fort Hood
Judges

The motions for immediate consideration are GRANTED.

The Court orders, pursuant to MCR 7.205(D)(2), that the trial court's May 30, 2007 order granting defendant's motion for relief from judgment, and resentencing, is REVERSED. This Court reviews the trial court's findings of fact for clear error, and the trial court's ultimate decision to grant relief from judgment for an abuse of discretion. *People v McSwain*, 259 Mich App 654, 681-685; 676 NW2d 236 (2003). To establish entitlement to relief from judgment, a defendant must show "actual prejudice." MCR 6.508(D)(3)(b). In the case of a challenge to a sentence, "actual prejudice" means "the sentence is invalid." MCR 6.508(D)(3)(b)(iv); see also MCR 6.429(A). A sentence is invalid when it is based upon a misconception of law. See *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). In this case, the trial court clearly erred in identifying the sentencing court's understanding of the law. To the extent the sentencing court misunderstood the law, the misunderstanding was in regard to the likelihood that defendant would be granted parole soon after he became eligible. Our Supreme Court has specifically held that "the failure to accurately predict the actions of the Parole Board does not constitute a misapprehension of the law that could render the sentence invalid." *People v Moore*, 468 Mich 573, 580; 664 NW2d 700 (2003). As a result, defendant's life sentence is valid, and the trial court abused its discretion in granting relief from judgment and resentencing.

The motion to file a reply brief is GRANTED.

This order shall have immediate effect. MCR 7.215(F)(2).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

AUG 01 2007

Date

Sandra Schultz Mengel
Chief Clerk