

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBAN LEE AUTHOR CALIFF,

Defendant-Appellant.

---

UNPUBLISHED

August 16, 2005

No. 254134

Wayne Circuit Court

LC No. 02-002374-01

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his sentence of ten to fifteen years in prison imposed after his conviction of probation violation. We vacate defendant's minimum term and remand for reinstatement of the original sentence of five to fifteen years. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty of second-degree home invasion, MCL 750.110a(3). The statutory sentencing guidelines established a minimum term range of ten to nineteen months. The trial court sentenced defendant to serve a term of two years' probation.<sup>1</sup> Subsequently, defendant pleaded guilty of third-degree home invasion, MCL 750.110a(4), and was sentenced to one and one-half to five years in prison for that offense.

Thereafter, defendant pleaded guilty of violating his probation in the instant case. Initially, the trial court sentenced him to five to fifteen years in prison, with credit for 109 days, on the underlying conviction of second-degree home invasion. As defendant was being escorted from the courtroom, he made an intemperate remark of uncertain content that caught the attention of the trial court. The trial court recalled the case, informed defendant that such disrespect would not be tolerated, and resentenced him to ten to fifteen years in prison.

---

<sup>1</sup> If the upper limit of the established guidelines range exceeds eighteen months and the lower limit of the range is twelve months or less, the trial court, absent a departure, must sentence the defendant to imprisonment with a minimum term within that range, or to an intermediate sanction that may include a term of imprisonment of not more than twelve months. MCL 769.34(4)(c). Probation is an intermediate sanction. MCL 769.31(b)(ii).

A trial court has the authority to resentence a defendant only if the initial sentence was invalid. MCR 6.429; *People v Moore*, 468 Mich 573, 579; 664 NW2d 700 (2003). A sentence is invalid when it exceeds statutory limits, is procured through fraud on the court by misrepresentation of information, is based on constitutionally impermissible grounds, is based on an improper assumption of guilt, is based on a misconception of law, is based on inaccurate information, or conforms to local sentencing policy rather than individualized facts. *Id.*; *People v Wyrick*, 265 Mich App 483, 492; 695 NW2d 555 (2005).

Defendant argues, and the prosecution concedes, that the trial court had no authority to resentence him to ten to fifteen years in prison based on his utterance of an intemperate remark after it imposed a valid sentence of five to fifteen years.<sup>2</sup> We agree,<sup>3</sup> vacate the ten-year minimum term imposed by the trial court, and remand this case for reinstatement of the original five-year minimum term. No authority holds that a defendant's act of making intemperate remarks after sentence has been imposed invalidates that sentence. *Moore, supra*. A new sentencing hearing is not warranted under the circumstances presented by this case. Only the minimum term of ten years to which defendant was resented is invalid. See *People v Williams (After Second Remand)*, 208 Mich App 60, 64; 526 NW2d 614 (1994).

Vacated in part and remanded. We do not retain jurisdiction.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ Donald S. Owens

---

<sup>2</sup> Defendant does not challenge the original minimum term of five years on the ground that the trial court failed to articulate substantial and compelling reasons for exceeding the guidelines. *People v Babcock*, 469 Mich 247; 666 NW2d 231 (2003); *People v Hendrick*, 261 Mich App 673; 683 NW2d 218 (2004), aff'd in part and rev'd in part on other grounds, \_\_\_ Mich \_\_\_; 697 NW2d 511 (2005).

<sup>3</sup> The trial court's original five-year minimum term was not an invalid sentence as that concept is defined. *Moore, supra*. The trial court was authorized to exceed the guidelines if it found that substantial and compelling reasons existed to do so. MCL 769.34(4)(c). The trial court did not indicate that it found that such reasons existed; nevertheless, as noted, defendant has not challenged the original sentence on that basis.