

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID D. EDWARDS, a/k/a ROBERT E.
CURETON,

Defendant-Appellant.

UNPUBLISHED

April 3, 2007

No. 263003

Wayne Circuit Court

LC Nos. 98-004201

00-008883-01

Before: White, P.J., and Zahra and Kelly, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the trial court's orders denying his motion for resentencing. We vacate and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In lower court docket number 98-004201, defendant pleaded guilty to possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and was sentenced to lifetime probation. In lower court docket number 00-008883, defendant pleaded guilty to attempted possession of less than 25 grams of cocaine, MCL 750.92 and MCL 333.7403(2)(a)(v), and was sentenced to three years' probation. Defendant violated probation several times, but was continued on probation after each violation.

For what appears to be the seventh time,¹ defendant again pleaded guilty to violating probation in March 2004. The trial court accepted defendant's plea. The trial court again continued defendant on probation, but added an additional requirement that he enter and complete a treatment program at "Gateway," and then serve six months on electronic tether. When defendant subsequently appeared before the trial court, he advised it that he was ineligible for admission to Gateway. However, the trial court stated on the record that it had spoken with the program director of Gateway and been informed otherwise. The trial court then resentenced defendant to 2 ½ to 20 years in prison for the 1998 case, and six months to two years in prison

¹ The trial court stated that defendant had appeared before it for probation violations on six previous occasions.

for the 2000 case “for the violation of probation.” The trial court denied defendant’s postjudgment motion for relief.

A trial court has authority to resentence a defendant if the original sentence was invalid, but it “may not modify a valid sentence after it has been imposed except as provided by law.” MCR 6.429(A). The court rule codifies the law that “absent an error that renders a sentence invalid, a circuit court lacks authority to modify the sentence a defendant has begun to serve.” *In re Parole of Bivings*, 242 Mich App 363, 371; 619 NW2d 163 (2000); *People v Wybrecht*, 222 Mich App 160, 166-167; 564 NW2d 903 (1997). 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 improper assumptions of guilt, is based on a misconception of law, is based on inaccurate information, or conforms to local sentencing policy rather than individualized facts. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997); *People v Thenghkam*, 240 Mich App 29, 70; 610 NW2d 571 (2000), overruled in part on other grounds by *People v Petty*, 469 Mich 108, 117; 665 NW2d 443 (2003).

In this case, the basis on which the court resentenced is unclear. There was no finding that the Gateway treatment program was an impossibility. While defendant reported that he was told that he was ineligible for the Gateway program, the trial court contacted the program director and was told otherwise. Therefore, the sentences were not based on inaccurate information. Because the trial court imposed valid sentences, it lost authority to impose different sentences after entry of the judgments of sentence. *People v Bingaman*, 144 Mich App 152, 158-159; 375 NW2d 370 (1984).

Alternatively, it is possible that the trial court concluded that defendant’s failure to enroll in the Gateway program was yet *another* violation of probation. However, if the failure to enroll in Gateway was viewed by the trial court as a new violation, the proceedings failed to comply with MCR 6.445. Because the record is simply unclear, we vacate the orders denying defendant’s motion and remand for further proceedings.

Vacated and remanded. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Kirsten Frank Kelly