

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHUR DANIEL,

Defendant-Appellant.

UNPUBLISHED

April 26, 2011

No. 293322

Wayne Circuit Court

LC No. 92-001371-FH

Before: BECKERING, P.J., and WHITBECK and M. J. KELLY, JJ.

MEMORANDUM.

Defendant appeals as of right his plea-based conviction¹ of unarmed robbery, MCL 750.530, and his sentence for that crime, as well as his sentence for breaking and entering an occupied dwelling with intent to commit a felony or larceny, MCL 750.110.² We remand for further development of the record, and for further proceedings, as needed, in accord with that development. Additionally, we remand for the correction of defendant's judgment of sentence.

Defendant offered his guilty plea in 1992, absconded before sentencing, was rearrested and arraigned for failure to appear in 2000, and then absconded again before sentencing. When defendant was finally sentenced on July 14, 2009, the trial court imposed concurrent sentences of imprisonment of three to 15 years for the robbery conviction and two to ten years for the breaking and entering conviction. Defendant's issues on appeal all stem from his contention that, in 1992, he pleaded guilty to breaking and entering with the understanding that the charge of unarmed robbery would be dropped.

¹ Defendant retained the prerogative to appeal by right because the criminal conduct at issue took place before 1994, when Michigan's Constitution was amended to provide for the appeal of plea-based convictions only by leave. See Const 1963, art 1, § 20.

² Defendant pleaded guilty to the breaking and entering offense in 1992, under the former version of MCL 750.110. The portion of MCL 750.110 defining the offense of breaking and entering a dwelling with intent to commit a felony or larceny was removed effective October 1, 1994, the same date that the home invasion statute, MCL 750.110a, went into effect.

Unfortunately, the documentation from the 1992 plea hearing is no longer available. This Court remanded this case to the trial court with instructions to settle the record in accordance with MCR 7.210(B)(2). The register of actions indicates that a proceeding to settle the record was held on February 5, 2010, and the record now includes an order purporting to grant defendant's motion to settle the record, and stating, simply, "It is settled." However, there is no certified statement of facts by the trial court as called for in MCR 7.210(B)(2)(c), and the activity resulting from the remand puts no indication in the record on the factual question of whether defendant in fact pleaded guilty to unarmed robbery in addition to his plea of guilty of breaking and entering.

Accordingly, we again remand this case to the trial court with instructions to answer this question on the record. We further instruct the court that if defendant did plead guilty to unarmed robbery, to leave the results below undisturbed, but that if defendant did not plead guilty to unarmed robbery, to vacate the conviction of and sentence for that crime, and also to rescore the guidelines and resentence defendant appropriately for the remaining conviction.

In addition, we note that in sentencing defendant for the breaking and entering conviction, the trial court imposed a lesser maximum sentence than provided for by statute. Under the former version of MCL 750.110, breaking and entering an occupied dwelling with intent to commit a felony or larceny was punishable by up to 15 years in prison. The trial court imposed only a ten-year maximum sentence. Therefore, we also remand for the ministerial task of amending defendant's judgment of sentence to reflect the proper statutory maximum of 15 years. See MCL 769.8; *People v Maxson*, 163 Mich App 467, 471; 415 NW2d 247 (1987); *People v Smith*, 35 Mich App 349, 351-352; 192 NW2d 626 (1971).

Remanded. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ William C. Whitbeck
/s/ Michael J. Kelly