

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
August 26, 2014

v

ROBERT LATEEF TILLMAN,

Defendant-Appellant.

No. 316145
Macomb Circuit Court
LC No. 2012-001782-FC

Before: MURPHY, C.J., and WHITBECK and TALBOT, JJ.

TALBOT, J. (*concurring in part, dissenting in part*).

While I concur with the majority that there was sufficient evidence presented at trial to support Tillman’s conviction for assault with intent to rob while armed, that Waller’s alleged improper testimony did not affect the outcome of the trial or render the trial fundamentally unfair, and its conclusion that counsel was effective, I write separately because I disagree with the majority’s determination that remand for resentencing is necessary to resolve the sentencing error of the trial court.

The majority is correct that “[a] sentence is invalid . . . when it is based upon . . . a misconception of law”¹ It is undisputed that the trial court erred in when it applied the rule in *People v Tanner*² to the instant case and adjusted Tillman’s maximum sentence to 300 months, which resulted in an invalid sentence. Not all invalid sentences, however, require resentencing. Ministerial or “[c]lerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party”³ Here, because an invalid sentence was imposed on Tillman, modification of his sentence was mandatory. Based on the record evidence, but for the trial court’s mistake, Tillman would have been sentenced to 180 to 240 months’ imprisonment, which all parties agree was a valid sentence. Thus, it is my opinion that modifying Tillman’s sentence

¹ *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997).

² 387 Mich 683; 199 NW2d 202 (1972).

³ MCR 6.435(A); *Miles*, 454 Mich at 98-99 (ministerial modifications do not require resentencing).

to 180 to 240 months' imprisonment would be merely ministerial rather than the correction of a substantive mistake.⁴ Accordingly, I would find that remand for resentencing is unnecessary.

/s/ Michael J. Talbot

⁴ Although the comment to the court rule suggests that errors of law are substantive mistakes (rather than clerical), which would require remand for resentencing, MCR 6.435, 1989 staff comment, that comment is not binding on this Court. *People v Howell*, 300 Mich App 638, 647-648; 834 NW2d 923 (2013).