

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DESHAWN WHITMAN,

Defendant-Appellant.

UNPUBLISHED

February 7, 2006

No. 256223

Wayne Circuit Court

LC No. 03-009701

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ASKIA HILL,

Defendant-Appellant.

No. 256497

Wayne Circuit Court

LC No. 03-013080-01

Before: Talbot, P.J., and White and Wilder, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I agree with the majority in all respects except with regarding to defendant Whitman's sentencing.

Defendant Whitman asserts that the sentencing transcript dated June 8, 2004 does not record the trial court's sentencing of defendant nor its reasons for the sentences. Defendant asserts that the June 8 transcript does not establish that defendant was allowed the right to allocute, and further argues that because the trial court had the duty to articulate on the record its reasons for the sentence imposed, this case must be remanded for resentencing.

The trial court stated at the outset of the June 8, 2004 sentencing hearing that "the only remaining issue was jail credit." In fact, the transcript reflects that only jail credit was discussed at that hearing. Although this supports the prosecution's position that the June 8 hearing was a continuation of a prior hearing, there is nothing in the record evidencing a prior sentencing hearing. The trial court record indicates that the only sentencing hearing occurred on June 8, 2004. Although the prosecutor contends that sentencing was initially scheduled for May 25,

2004, and was adjourned at defendant's request, and that a June 2, 2004 hearing was adjourned by court order, and these dates indeed appear in Wayne Circuit Court's internal docketing system, there is no indication that any proceedings took place *on the record* on these dates. Defendant's counsel ordered all trial and sentencing transcripts, and the only sentencing transcript filed was for June 8. Under these circumstances, I cannot conclude that defendant has waived this issue. Because the record contains neither the court's sentence nor the reasons therefor, I would remand to the trial court for a determination whether sentencing proceedings in fact took place at an earlier time, and if so, for the trial court to order a transcript produced. If no record of such a sentencing proceeding were to emerge, I would order defendant resentenced.

/s/ Helene N. White