

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GHASSAN SALIM SARDY,

Defendant-Appellant.

UNPUBLISHED

May 14, 2020

No. 346962

Oakland Circuit Court

LC No. 2013-244734-FH

Before: JANSEN, P.J., and METER and CAMERON, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of child sexually abusive activity (CSAA), MCL 750.145c(2), using a computer to commit a crime (UCCC), MCL 752.796; MCL 752.797(3)(f), and two counts of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(2)(b) (victim under 13 years of age, defendant 17 years of age or older). Following defendant's sentencing, he appealed to this Court, and this Court affirmed his convictions but ordered a *Crosby*¹ remand. *People v Sardy*, 313 Mich App 679, 732; 884 NW2d 808 (2015), vacated in part 500 Mich 887 (2016) (*Sardy I*). On application for leave to appeal to the Supreme Court, the Supreme Court vacated the portion of *Sardy I* regarding defendant's right to confrontation and remanded to this Court for consideration of the confrontation issue. *People v Sardy*, 500 Mich 887, 887 (2016). On remand, this Court vacated both CSC-II convictions, affirmed defendant's CSAA and UCCC convictions, and remanded to the trial court for resentencing on the two remaining issues. *People v Sardy*, 318 Mich App 558, 563; 899 NW2d 107 (2017) (*Sardy II*). The trial court resentenced defendant to 65 months to 20 years' imprisonment for both CSAA and UCCC. This appeal followed. We affirm.

¹ *United States v Crosby*, 397 F3d 103 (CA 2, 2005).

I. FACTS AND PROCEDURAL HISTORY

In defendant's first appeal, this Court previously summarized the underlying facts of this case as follows:

Defendant is the biological father of the victim. Defendant and the victim's mother were not married, and they were residing in different homes when the child made claims to her mother regarding inappropriate sexual behavior by defendant. The child's mother contacted law enforcement, which led to a forensic interview of the child and the execution of a search warrant at defendant's home. In executing the warrant, the police seized computers, including an Apple iMac, external hard drives, numerous CDs, a diskette, multiple SD (storage data) cards, two cellular phones, including an iPhone 4, and a flash drive. A detective, who was qualified as an expert in computer forensic examinations, testified that, for the most part, examination of these items did not reveal any suspicious activities. He did, however, discover a CD with nude images of the child in the bathtub and bathroom. Additionally, the detective retrieved two suspicious videos, created seven minutes apart, that had been filmed using defendant's iPhone 4. These videos were additionally stored on the iMac and an external hard drive, and they formed the basis of the CSAA and computer-crime charges. The victim was clothed in both videos, and in one video, the child is observed, as described by the detective, "grinding . . . on the couch," with defendant "focusing [the camera] on her rear end." The detective opined that the child's act entailed manual manipulation of the genitals, and the prosecution characterized the victim's actions as constituting masturbation for purposes of the charges. In the video, defendant is heard asking the child why she was engaging in the act, and she responded, "because it's comfortable." When defendant then asked her why it was comfortable, the child expressed that it felt good. With respect to the second video, the child is seen grinding against the couch with one hand under her body on her genitals. The child's mother testified to having once observed the child with "her hands between her legs and . . . gyrating on the bed," and when she told the child to stop, the child responded that "she was allowed to" engage in the behavior. [*Sardy I*, 313 Mich App at 689-690 (footnotes omitted).]

The jury found defendant guilty of CSAA, UCCC, and two counts of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(2)(b) (victim under 13 years of age, defendant 17 years of age or older). The trial court sentenced defendant to 71 months to 20 years' imprisonment for CSAA, 71 months to 20 years' imprisonment for UCCC, and two terms of 71 months to 15 years' imprisonment for two counts of CSC-II.

Defendant filed his first appeal with this Court, arguing, in part, that the trial court violated his constitutional right to confront the victim when it admitted her preliminary examination testimony at trial. *Id.* at 679. The *Sardy I* Court affirmed defendant's convictions but remanded to the trial court for a *Crosby* remand because the trial court engaged in judicial fact-finding in assessing 10 points for Offense Variable (OV) 4 and 10 points for OV 19. *Id.* at 732. On application for leave to appeal to the Supreme Court, the Supreme Court vacated the portion of *Sardy I* regarding defendant's right to confrontation, remanded to this Court for consideration of

the confrontation issue, and denied leave in all other aspects. *People v Sardy*, 500 Mich 887, 887 (2016).

On remand, this Court vacated both CSC-II convictions holding that defendant's right to confront the victim had been violated. *Sardy II*, 318 Mich App at 563. The *Sardy II* Court affirmed defendant's convictions for CSAA and UCCC, and remanded to the trial court for resentencing on the two remaining convictions. *Id.* at 567. On remand to the trial court, the court assessed 25 points for OV 13 and 10 points for OV 19, and sentenced defendant to 65 months to 20 years' imprisonment for both CSAA and UCCC. This appeal followed.

II. CHALLENGES TO THE OV SCORES ARE MOOT

Defendant argues that the trial court erred in assessing 25 points for OV 13 and 10 points for OV 19. However, we conclude that this issue is moot.

"An issue is moot when an event occurs that renders it impossible for the reviewing court to fashion a remedy to the controversy." *People v Jones*, 317 Mich App 416, 431; 894 NW2d 723 (2016), quoting *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004). When a defendant has already served his minimum sentence, this Court is unable to provide a remedy for the alleged sentencing error, and the issue is moot. *People v Tombs*, 260 Mich App 201, 220; 679 NW2d 77 (2003); *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994). In this case, defendant has already served his minimum sentence, and thus the scoring issues he raises are moot.² Because this Court generally does not decide moot issues, *People v Richmond*, 486 Mich 29, 34; 782 NW2d 187 (2010), we decline to address this issue on appeal.

III. CONFRONTATION CLAUSE

Defendant also argues that this Court should vacate his convictions for CSAA and UCCC because his constitutional right to confront the witnesses against him was violated when the trial court improperly permitted the victim's preliminary examination testimony to be admitted at trial. In addition, defendant contends that had he had the opportunity to cross-examine the victim, the jury may not have convicted him of CSAA and UCCC. However, defendant's arguments are outside the scope of the remand, and thus not reviewable by this Court.

"[W]here an appellate court remands for some limited purpose following an appeal as of right in a criminal case, a second appeal as of right, limited to the scope of the remand, lies from the decision on remand." *People v Kincade*, 206 Mich App 477, 481; 522 NW2d 880 (1994). "[T]he scope of the second appeal is limited by the scope of the remand." *People v Jones*, 394

² The trial court resentenced defendant to two terms of 65 months to 20 years' imprisonment for CSAA and UCCC. The terms were to run concurrently, and defendant was credited 1,760 days credit for time served. The Michigan Department of Corrections website states that defendant's minimum sentence was five months and five days and his earliest release date was February 22, 2019. Thus, defendant has already served his minimum sentences of 65 months' imprisonment.

Mich 434, 435-436; 231 NW2d 649 (1975). “An appeal from a resentencing is limited to the resentencing proceeding.” *People v Gauntlett*, 152 Mich App 397, 400; 394 NW2d 437 (1986). In this case, the *Sardy II* Court affirmed defendant’s convictions for CSAA and UCCC but remanded for resentencing on those convictions concluding that resentencing was necessary “because there exists a possibility that the vacation of the CSC-II convictions may affect the scoring of the sentencing variables and the exercise of the court’s sentencing discretion.” *Sardy II*, 318 Mich App at 558. The *Sardy II* Court limited the remand to resentencing, and thus, this appeal is limited to the resentencing proceeding. Because defendant’s challenge to the merits of his convictions for CSAA and UCCC is outside the scope of this appeal, this Court declines to review this issue.

Affirmed.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Thomas C. Cameron