

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALVIN JAMAL JACKSON,

Defendant-Appellant.

UNPUBLISHED

May 14, 2020

No. 347886

Macomb Circuit Court

LC Nos. 2017-000798-FH;

2017-000799-FH;

2017-000800-FH;

2018-000112-FH.

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

PER CURIAM.

Defendant, Alvin Jamal Jackson, appeals by leave granted¹ from four judgments of sentence. We affirm.

I. FACTS AND PROCEDURAL BACKGROUND

On August 14, 2017, Jackson pleaded guilty to multiple crimes in relation to his three 2017 cases.² On June 11, 2018, Jackson pleaded *nolo contendere* to eleven crimes in relation to his

¹ *People v Jackson*, unpublished order of the Court of Appeals, entered May 21, 2019 (Docket No. 347886).

² In Case No. 2017-000798-FH, Jackson pleaded guilty to delivering less than 50 grams of a controlled substance, cocaine, MCL 333.7401(2)(a)(iv). In Case No. 2017-000799-FH, Jackson pleaded guilty to three crimes: two counts of delivering less than 50 grams of a controlled substance, cocaine, and possession of a controlled substance, marijuana, MCL 333.7403(2)(d). In Case No. 2017-000800-FH, Jackson pleaded guilty to delivering less than 50 grams of a controlled substance, cocaine.

2018 case.³ On August 8, 2018, Jackson was sentenced as a fourth-offense habitual offender, MCL 769.12, to terms of imprisonment for all of the crimes. Thereafter, Jackson filed a delayed application for leave to appeal, alleging that he was entitled to resentencing in the 2018 case because the trial court erroneously assessed 15 points for Offense Variable (“OV”) 19, MCL 777.49. Jackson also argued that his trial counsel provided ineffective assistance for multiple reasons in relation to all of the cases, and he requested that this Court remand the matter to the trial court to hold a *Ginther*⁴ hearing concerning his claims of ineffective assistance of counsel.

On May 21, 2019, this Court entered an order granting Jackson’s delayed application for leave to appeal in part, stating:

The Court orders that the delayed application for leave to appeal is GRANTED only as to the issue of whether Offense Variable 19 of the sentencing guidelines was scored correctly in this case. In all other respects, the delayed application is DENIED for lack of merit in the grounds presented. The time for taking further steps in this appeal runs from the date of this order. MCR 7.205(E)(3). [*People v Jackson*, unpublished order of the Court of Appeals, entered May 21, 2019 (Docket No. 347886).]

Jackson filed his brief on appeal, arguing that OV 19 should have been assessed 10 points instead of 15 points because he never used force or threatened to use force when he interfered with the administration of justice. See MCL 777.49(b). The prosecution conceded that OV 19 was improperly scored. Thereafter, Jackson filed a motion to remand for resentencing, which this Court granted, stating:

This case is REMANDED to the trial court to allow the court to consider whether offense variable (OV) 19, MCL 777.49, was wrongly scored, and for possible rescoring of OV 19 and possible resentencing. Proceedings on remand are limited to the issue raised in the motion to remand. This Court retains jurisdiction.

* * *

³ In Case No. 2018-000112-FH, Jackson pleaded *nolo contendere* to the following crimes: possession with intent to deliver or manufacture 50 grams to 449 grams of a controlled substance, cocaine, MCL 333.7401(2)(a)(iii); possession with intent to deliver or manufacture less than 50 grams of a controlled substance, hydrocodone; failure to stop on direction of a police officer, second-degree fleeing, MCL 257.602a(4)(a); receiving and concealing stolen property, firearms, MCL 750.535b; felon in possession of a firearm, MCL 750.224f; failure to stop at the scene of an accident resulting in serious impairment or death, MCL 257.617; and failure to stop at the scene of an accident resulting in personal injury, MCL 257.617a. Jackson also pleaded *nolo contendere* to two counts of possession of a firearm in the commission of a felony, MCL 750.227b, and two counts of failure to stop after a collision, MCL 257.620.

⁴ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

[Jackson] may file a supplemental brief addressing the issues raised on remand within 21 days after the date of entry of the trial court's order deciding the matter or the date the transcript is filed, whichever is later. [The prosecution] may file a supplemental brief in response. [*People v Jackson*, unpublished order of the Court of Appeals, entered September 25, 2019 (Docket No. 347886).]

In accordance with this Court's order, the trial court held Jackson's resentencing hearing with regard to OV 19. The trial court concluded that it should have assessed 10 points for OV 19 instead of 15 points. As a result, the trial court reduced the points assessed for OV 19 to 10 points, which reduced Jackson's recommended guidelines minimum sentencing range from 84 to 280 months to 78 to 260 months. Accordingly, the trial court resentenced Jackson. All of Jackson's sentences remained the same as his original sentences, as did the order in which Jackson is required to serve his sentences. After remand, Jackson filed a supplemental brief, arguing that his sentences are not proportionate and that this Court should not affirm the sentences on the basis of MCL 769.34(10).

II. ANALYSIS

As already discussed, this Court granted leave to appeal with respect to Jackson's argument that the trial court should have assessed 10 points for OV 19 instead of 15 points, and whether Jackson was entitled to resentencing. On remand, the trial court concluded that it should have assessed 10 points for OV 19 instead of 15 points, and reduced Jackson's recommended guidelines minimum sentencing range. As a result, the trial court properly resentenced Jackson. *People v Sours*, 315 Mich App 346, 350; 890 NW2d 401 (2016) ("Because OV 19 was improperly scored, which resulted in an improperly calculated guidelines range, defendant is entitled to be resentenced.") (citation omitted). Because Jackson received the relief he requested on appeal, the issue is now moot and this Court need not consider whether OV 19 was properly scored. See *People v Richmond*, 486 Mich 29, 34; 782 NW2d 187 (2010) ("It is well established that a court will not decide moot issues.").

With respect to the issues raised in Jackson's supplemental brief, we conclude that they are not properly before us. When leave to appeal is granted, "the appeal is limited to the issues raised in the application and supporting brief," unless this Court orders otherwise. MCR 7.205(E)(4). As already stated, Jackson argued in his delayed application for leave to appeal that the trial court improperly assessed 15 points for OV 19 and that his trial counsel was ineffective. This Court granted Jackson's delayed application for leave to appeal "only as to the issue of whether Offense Variable 19 of the sentencing guidelines was scored correctly[.]"

Furthermore, this Court's remand order did not hold that Jackson had the unfettered right to raise additional arguments on appeal. Rather, in the September 25, 2019 order, this Court indicated that it was remanding the matter "to allow the court to consider whether" OV 19 "was wrongly scored, and for possible rescoring of OV 19 and possible resentencing." This Court specifically held that proceedings on remand were "limited to the issue raised in the motion to remand," which only concerned the scoring of OV 19. Although this Court held that Jackson was permitted to file a supplemental brief "addressing the issues raised on remand," review of the resentencing transcript and the transcript of the hearing that followed resentencing establishes that the issue of proportionality was not raised on remand. Because the arguments contained in

Jackson's supplemental brief exceed the scope of this Court's remand order, this Court cannot consider Jackson's additional arguments. See MCR 7.205(E)(4). Nonetheless, to the extent that we have considered the arguments, we conclude that they lack merit.

Affirmed.

/s/ Kathleen Jansen

/s/ Patrick M. Meter

/s/ Thomas C. Cameron