

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL ANTHONY BATES,

Defendant-Appellant.

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UNPUBLISHED

May 14, 2020

No. 348125

Ingham Circuit Court

LC No. 13-000718-FC

Before: SWARTZLE, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

In 2014, defendant, Daniel Bates, pleaded guilty to one count of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(b), and one count of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(a). He was sentenced to serve concurrent terms of 9 to 40 years in prison for the CSC-I conviction, and 5 to 15 years in prison for the CSC-II conviction, with credit for 272 days served in jail. Following Bates’s 2018 motion for relief from judgment, the trial court added a requirement of lifetime electronic monitoring. Bates now appeals by delayed leave granted,<sup>1</sup> arguing that the addition of lifetime electronic monitoring violates the Ex Post Facto Clauses of the United States and Michigan Constitutions. The prosecution concedes error. For the reasons stated in this opinion, we vacate the September 26, 2018 judgment of sentence and remand for the trial court to reinstate Bate’s November 3, 2015 judgment of sentence.

**I. BASIC FACTS**

Bates pleaded guilty to one count of CSC-I and one count of CSC-II for offenses that occurred between 2002 and 2006. At sentencing, the trial court informed Bates that at least one of his offenses would require lifetime electronic monitoring. However, when the trial court sentenced Bates in February 2014, it did not check the box for lifetime electronic monitoring on

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<sup>1</sup> *People v Bates*, unpublished order of the Court of Appeals, entered April 29, 2019 (Docket No. 348125).

the judgment of sentence. The judgment of sentence was amended in November 2015, but this amendment only added a no-contact order that was mistakenly left off the initial judgment of sentence and the box for lifetime electronic monitoring was again left unchecked. Bates filed a delayed application for leave to appeal in this Court in which he raised an issue different from that raised in the present appeal. This Court denied the application.<sup>2</sup>

Thereafter, in March 2018, Bates filed a motion for relief from judgment, asking the trial court to resentence him. He contended that his sentence was invalid because it failed to include lifetime electronic monitoring. The trial court agreed that Bates's sentence was invalid, so it vacated his previous sentence and resented him to serve 9 to 40 years for the CSC-I conviction and 5 to 15 years for the CSC-II conviction, with credit for 1,966 days served, and it added lifetime electronic monitoring. Subsequently, the Michigan Department of Corrections notified the trial court that there was a possible issue with the sentence imposed. The trial court then sent Bates a letter explaining that the imposition of lifetime electronic monitoring was erroneous because the CSC offenses were committed "prior to the August 28, 2006 amendment of MCL 750.520n" The court explained that although the imposition of lifetime electronic monitoring was an "ex post facto violation," the court could not sua sponte correct the invalid sentence. Therefore, the court directed Bates to file a motion to correct an invalid sentence. Rather than follow the court's directive, Bates filed in this Court his delayed application for leave to appeal, which we granted.

## II. EX POST FACTO

### A. STANDARD OF REVIEW

Bates argues that the imposition of lifetime electronic monitoring violates the ex post facto clauses of the United States and Michigan Constitutions. The trial court and the prosecution agree. We review this unpreserved error for plain error affecting Bates's substantial rights. See *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

### B. ANALYSIS

Both the United States and Michigan Constitutions prohibit ex post facto laws. US Const, art I, § 10; Const 1963, art 1, § 10. Laws violate these clauses if they meet two requirements: "(1) they attach legal consequences to acts before their effective date, and (2) they work to the disadvantage of the defendant." *People v Wiley*, 324 Mich App 130, 152; 919 NW2d 802 (2018) (quotation marks and citations omitted). "The critical question [for an *ex post facto* violation] is whether the law changes the legal consequences of acts completed before its effective date." *Id.* (quotation marks and citation omitted; alteration in original). "The imposition of a punishment more severe than that assigned by law when the criminal act occurred is a violation of the Constitution's *ex post facto* prohibition." *Id.* at 154 (quotation marks and citation omitted).

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<sup>2</sup> *People v Bates*, unpublished order of the Court of Appeals, entered December 8, 2014 (Docket No. 323262).

Lifetime electronic monitoring is an additional punishment and penalty that is a part of a defendant's sentence. *People v Cole*, 491 Mich 325, 335-336; 817 NW2d 497 (2012).

MCL 750.520n(1) provides:

A person convicted under [MCL 750.520b] or 520c for criminal sexual conduct committed by an individual 17 years old or older against an individual less than 13 years of age shall be sentenced to lifetime electronic monitoring as provided under . . . MCL 791.285.

Section 520n was made effective on August 28, 2006. See 2006 PA 171. In the present case, Bates's two CSC convictions were for offenses that occurred before 2006 and Section 520n's effective date. Therefore, adding lifetime electronic monitoring was an increase in Bates's punishment for offenses that occurred prior to Section 520n's effective date. Accordingly, the trial court plainly erred by sentencing Bates to lifetime electronic monitoring. Given the increase in punishment, this error prejudiced Bates. And, although Bates invited this error through his motion for resentencing when he complained that his sentence was invalid because it did not include lifetime electronic monitoring, see *People v Jones*, 468 Mich 345, 352 n 6; 662 NW2d 376 (2003), we conclude that it is nevertheless within our discretion to vacate his constitutionally deficient sentence. See MCR 7.216(A)(7) (allowing this Court to exercise its discretion to "enter any judgment or order or grant further or different relief as the case may require").<sup>3</sup>

Vacated and remanded for reinstatement of the November 3, 2015 judgment of sentence. We do not retain jurisdiction.

/s/ Brock A. Swartzle  
/s/ Elizabeth L. Gleicher  
/s/ Michael J. Kelly

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<sup>3</sup> Given our resolution, we decline to consider Bates's alternative argument that the trial court lacked authority to resentence him.