STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 11, 2020
v	No. 347036 Berrien Circuit Court
TERRANCE DEYOUNG SELF, Defendant-Appellant.	LC No. 2017-005088-FH

Before: MARKEY, P.J., and JANSEN and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted[1] his convictions of two counts of delivery of a controlled substance, MCL 333.7401(2)(b)(*i*). The trial court initially sentenced defendant to 24 months to 20 years' imprisonment, then amended the judgment of sentence to reflect that defendant was to serve 72 months to 20 years' imprisonment. We reverse, and remand for the limited purpose of correcting defendant's judgment of sentence to accurately reflect his sentence of 24 months to 20 years' imprisonment.

Defendant pleaded guilty to two counts of delivery of a controlled substance in exchange for the prosecution dropping two additional counts of delivery of a controlled substance, as well as an agreement not to pursue a fourth-offense habitual offender status. Accordingly, the minimum sentencing guidelines range was 72 to 120 months' imprisonment.

At defendant's sentencing hearing on June 26, 2018, the trial court lectured defendant on the nature of his crime, and his criminal history, and indicated that the sentence it would impose was meant as punishment, protection of the community, deterrence, and reformation. Accordingly, the trial court articulated on the record that it would be sentencing defendant to 24 months to 20 years' imprisonment. The prosecution confirmed on the record the sentence. The register of actions in this case lists the date of entry the original judgment of sentence as June 26, 2018.

[1] *People v Self*, unpublished order of the Court of Appeals, entered February 8, 2019 (Docket No. 347036).

Moreover, the record contains an order of commitment dated June 26, 2018, that states defendant was sentenced to 24 months to 20 years' imprisonment.

On June 27, 2018, the trial court held a corrected sentencing hearing. The trial court noted that it had misspoken when rendering defendant's sentence, and that it had intended to sentence defendant to a minimum of 72 months' imprisonment. Accordingly, an amended judgment of sentence was entered on June 28, 2018, reflecting a sentence of 72 months to 20 years' imprisonment.

Defendant argues on appeal that the trial court erred by amending a valid sentence. We agree.

This Court reviews sentencing decisions for an abuse of discretion. *People v Skinner*, 502 Mich 89, 131; 917 NW2d 292 (2018). This Court also reviews arguments involving the interpretation and application of statutes de novo. *People v Waclawski*, 286 Mich App 634, 645; 780 NW2d 321 (2009). The same legal principles governing the interpretation of statutes govern the interpretation of court rules. *People v Comer*, 500 Mich 278, 287; 901 NW2d 553 (2017).

MCR 6.429(A) provides:

> (A) Authority to Modify Sentence. The court may correct an invalid sentence, on its own initiative after giving parties an opportunity to be heard, or on motion by either party. But the court may not modify a valid sentence after it has been imposed except as provided by law. Any correction of an invalid sentence on the court's own initiative must occur within 6 months of the entry of judgment of conviction and sentence.

An invalid sentence is a sentence that contains an error or defect in the sentence or sentencing procedure which entitles a defendant to be resentenced, or to have the sentence changed. *People v Whalen*, 412 Mich 166, 169-170; 312 NW2d 638 (1981). However, "a trial court is without authority to set aside a valid sentence and impose a new one." *Id.* at 169. See also *People v Mitchell*, 454 Mich 145, 176; 560 NW2d 600 (1997), where our Supreme Court reiterated that "[w]e have long recognized . . . that a sentence may be set aside only when it is invalid."

Defendant's original sentence of 24 months to 20 years' imprisonment was not invalid. Indeed, it was below the minimum sentencing guidelines range, but that alone does not render it invalid. As of June 26, 2018, the trial court had reduced defendant's sentence to writing. The register of actions indicates that the original judgment of sentence was entered on June 26, 2018, following the first sentencing hearing, and an order of commitment was entered on that same date. That order of commitment reflects defendant's sentence of 24 months to 20 years' imprisonment. The trial court lacked authority to amend a valid sentence after that date. MCR 6.429(A). We conclude that the trial court exceeded its authority by amending defendant's sentence on its own initiative. Defendant's sentence of 72 months to 20 years' imprisonment cannot stand.

Reversed, and remanded for the limited purpose of correcting defendant's judgment of

sentence to accurately reflect his sentence of 24 months to 20 years' imprisonment. We do not retain jurisdiction.

/s/ Kathleen Jansen

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BOONSTRA, P.J. (*concurring*).

As much as I might like to join the dissent in fixing the trial court's sentencing error in this case, I conclude that I am unable to do so, at least at this juncture.

On June 26, 2018, the trial court orally sentenced defendant to 24 months to 20 years' imprisonment, below the minimum sentence guidelines range of 72 to 120 months' imprisonment. Upon questioning by the prosecution, the trial court reiterated that that was its sentence.

The next day, the trial court claimed that it had intended to sentence defendant to a minimum of 72 months' imprisonment, and that contemporaneously with its oral pronouncement had written down "on the court file minute sheet[] a minimum of 72 months in prison" and signed it. The problem is that no such "court file minute sheet" exists anywhere in the record.

While the dissent gives lip service to the fact that "[a] court speaks through written judgments and orders rather than oral statements or written opinions," *People v Jones*, 203 Mich App 74, 82; 512 NW2d 26 (1993), it essentially ignores this critical fact. It instead highlights the fact that there is no document in the record specifically entitled "judgment of sentence" showing a minimum sentence of 24 months. And that is certainly true.

But now that we have established what the record does *not* show, what *does* it show? It shows that the trial court's Case Event Report (often referred to as a Register of Action or ROA), under the date of June 26, 2018, references a "Judgment of Sentence Form" and further reflects that a sentencing hearing was held and a sentence of "0024 MONTHS 0020 YEARS" was imposed. The record also reflects that the trial court, on the same date, signed and entered into the

record an order of commitment that, while not specifically labeled a "Judgment of Sentence," specifically orders that defendant be "Committed to State Prison as Follows: 24 months – 20 years." Consequently, the only contemporaneous *writings* in the record are consistent with the trial court's oral minimum sentence of 24 months.

The record also reflects that the trial court held a further sentencing hearing on June 27, 2018, and the ROA reflects "AMENDED SENTENCING HELD" and a sentence of "0072 MONTHS 0020 YEARS." And the trial court signed an "Amended Judgment of Sentence," dated June 28, 2018, reflecting that amended sentence. But since, as the trial court recognized, that judgment of sentence was an "amended" one, what did it amend? It must have amended an earlier judgment of sentence that had imposed a different (i.e., the lower, 24-month minimum) sentence. I cannot both discount the signed commitment order as something other than a judgment of sentence and yet attribute the trial court's labeling of the "amended" judgment of sentence as "amended" to the fact that it had earlier signed the order of commitment.

I also cannot explain (nor, apparently, can anyone else) what happened to either the "court file minute sheet" that the trial court says that it signed or the June 26, 2018 "Judgment of Sentence Form" reflected in the ROA. Neither apparently exists. That frustrates me, as does the fact that the trial court appears to have said one thing and done another, and may have sentenced defendant to a lower sentence that it intended. But, under *People v Dotson*, 417 Mich 940; 331 NW2d 477 (1983), I think that we and the trial court are stuck with that, at least for now.

I do agree with the dissent that when the trial court, on remand, corrects defendant's judgment of sentence to accurately reflect his sentence (whether errantly imposed or not) of 24 months to 20 years' imprisonment, the prosecution may then have a right to appeal (or take other action in the trial court short of an appeal) the sentence as an out-of-guidelines sentence for which the trial court has provided no justification. However, because the prosecution to date has not filed an appeal or cross-appeal on that issue, I would not address it sua sponte today. While that may seem judicially inefficient, I would let the process proceed in the usual course and address the issue if and when it returns to us.

/s/ Mark T. Boonstra

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MARKEY, P.J. (*dissenting*).

Because I conclude that the trial court did not err by imposing the 72-month minimum sentence, I respectfully dissent.

I. BACKGROUND

This case arises out of defendant's sale of methamphetamine to an undercover police officer on several separate occasions. Defendant pleaded guilty to two counts of delivery of a controlled substance, MCL 333.7401(2)(b)(*i*). The minimum sentence guidelines range was 72 to 120 months' imprisonment. At sentencing, defendant took responsibility for his actions and asked the trial court to sentence him at the bottom end of the guidelines range.

The trial court noted that defendant had been on probation three times in the past, with probation being revoked every time. The court observed that defendant had 9 felony and 13 misdemeanor convictions and had been to jail and prison myriad times. The trial court lectured and criticized defendant regarding his behavior and the excuses he gave for his crimes. The court accurately acknowledged the guidelines range and indicated that the purposes of sentencing are punishment, protection of the community, deterrence, and reformation. The trial court proceeded to sentence defendant to 24 months to 20 years' imprisonment, which reflected a *four-year downward departure*. Although the prosecutor asked for clarification, and the trial court confirmed the 24-month minimum sentence, the court did not set forth reasons in support of a major downward departure. Indeed, the trial court did not mention anything about a departure.

The next day the trial court held a hearing to correct the sentence, claiming a previous "misstatement on the record." The court stated that it had given defendant "a little bit of a lecture" when sentencing him. The court indicated that it had written down "on the court file minute sheet[] a minimum of 72 months in prison" and then signed it. The court noted that its intent had been to sentence defendant to a minimum prison term of 72 months, and it thought that it had done so. According to the trial court, its clerk notified the court "later that day" that it had said on the record "24 months' imprisonment." The trial court explained that it had written down 72 months on the presentence investigation report (PSIR) and on its handwritten judgment of sentence. The court claimed that it was writing and talking at the same time and "misspoke and actually said the words 24 months." The trial court indicated that it had no idea that it made the mistake and "was shocked to hear" that it said something different from what it had written down. The court was going to just correct the sentence, but it decided to hold the second hearing to "make the correction on the record so the defendant can hear it and so counsel can hear it." The trial court observed that its written order was, at all times, correct in stating that the minimum sentence was 72 months in prison.

The trial court further commented that it was surprised that no one had said anything to the court, considering the comments it had made to defendant reprimanding him. The court noted that the only reason the correction was not made immediately on the record was because defense counsel was not from the area and had already left. Furthermore, the trial court found that the ruling in *People v Dotson*, 417 Mich 940; 331 NW2d 477 (1983), did not apply to the situation at hand because it was not setting aside a sentence. The court asserted that it was "merely correcting the verbal mistake." The trial court said that it was in "disbelief" and "had literally no idea how [the sentence] came out incorrectly." The court "sincerely did not mean to mislead anyone" and "didn't even know [it] had." According to the trial court, the written sentence of 72 months' imprisonment conformed to the handwritten order it had signed and placed in the court file. The trial court indicated that it only held the second hearing as a "formality" because it "misspoke" in court.

II. REASONS FOR MY DISSENT

A. THE JUDGMENT OF SENTENCE

"A court speaks through written judgments and orders rather than oral statements or written opinions." *People v Jones*, 203 Mich App 74, 82; 512 NW2d 26 (1993). And, in particular, MCR 6.427(7) provides that "[w]ithin 7 days after sentencing, the court must date and sign a written *judgment of sentence* that includes . . . the term of the sentence." (Emphasis added.) MCR 6.429(A) speaks to the issue of correcting "an invalid sentence," which necessarily presupposes entry of a judgment of sentence that is later the subject of an attempt to invalidate it. The record here is crystal clear that the trial court merely misspoke when it stated that the minimum sentence would be four years less than the bottom end of the sentencing guidelines range.

As indicated earlier, the trial court stated on the record that it had written down 72 months as the minimum sentence on a handwritten *judgment of sentence*.[1] The only *judgment of sentence* that is contained in the court file also sets forth the 72-month minimum sentence. While the judgment of sentence indicated that it was an "amended" judgment, this was ostensibly meant to simply signify the trial court's misstatement the previous day or to reflect that it had written down 24 months on a commitment form. *There is no document titled* ***judgment of sentence*** *in the record showing a minimum sentence of 24 months*. And the order of commitment, which the majority relies on, is not labeled a judgment of sentence. Accordingly, there was no modification or alteration of a judgment of sentence for purposes of MCR 6.429(A).

B. DOWNWARD DEPARTURE – INVALID SENTENCE

"Although trial courts are no longer required to articulate substantial and compelling reasons to justify departures, they are still *required* to articulate 'adequate reasons' to justify departures[.]" *People v Skinner*, 502 Mich 89, 134 n 25; 917 NW2d 292 (2018) (citation omitted; emphasis added). Assuming that MCR 6.429(A) was implicated, I believe that the trial court's failure to articulate any reasons whatsoever for the downward departure rendered the sentence invalid and thus correctable. See *People v Comer*, 500 Mich 278, 292; 901 NW2d 553 (2017) ("Because defendant's judgment of sentence did not include [a] statutorily mandated punishment, we agree with the Court of Appeals that his sentence was invalid" for purposes of MCR 6.429[A].); *People v Buehler*, 477 Mich 18, 28; 727 NW2d 127 (2007) ("if the sentencing court desires to impose a probationary sentence, the court must articulate substantial and compelling reasons for the downward departure on the record. Because the sentencing court did not properly sentence defendant under the guidelines, the sentence of probation is invalid"), abrogated in part on other grounds by *People v Arnold*, 502 Mich 438; 918 NW2d 164 (2018); *People v Whalen*, 412 Mich 166, 170; 312 NW2d 638 (1981) (a sentence is invalid when it does not comply with essential procedural requirements). Accordingly, the trial court here did not commit error under MCR 6.429(A) by correcting the invalid minimum sentence.

C. MCR 6.435(A)

The majority focuses exclusively on MCR 6.429(A), which provides, in part, that "[t]he court may correct an invalid sentence, on its own initiative after giving the parties an opportunity to be heard, or on motion by either party." MCR 6.435(A) provides that "[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, and after notice if the court orders it."

"When called upon to interpret and apply a court rule, this Court applies the principles that govern statutory interpretation." *Haliw v Sterling Hts*, 471 Mich 700, 704–705; 691 NW2d 753 (2005); see also *Fleet Business Credit, LLC v Krapohl Ford Lincoln Mercury Co*, 274 Mich App 584, 591; 735 NW2d 644 (2007). "Court rules should be interpreted to effect the intent of the drafter, the Michigan Supreme Court." *Fleet Business*, 274 Mich App at 591. Clear and

[1] The trial court specifically stated, "I actually wrote it down here on the PSI[R] the same as I did on the handwritten judgment of sentence in the court file as 72 months."

unambiguous language contained in a court rule must be given its plain meaning and is enforced as written. *Id*. We may consult a dictionary to determine the plain meaning of an undefined term used in the court rules. *Wardell v Hincka*, 297 Mich App 127, 132; 822 NW2d 278 (2012).

I conclude that the mistake made by the trial court in the instant case is akin to a clerical error or an error of oversight or omission. In fact, the term "oversight" is defined as "an inadvertent omission or error." *Merriam-Webster's Collegiate Dictionary* (11th ed). Here, the trial judge inadvertently erred by failing to notice that she misspoke and said 24 months while she was writing down 72 months.

D. APPEAL BY PROSECUTOR

The majority reverses and remands for the limited purpose of correcting the judgment of sentence to reflect a minimum prison sentence of 24 months. In addition to my analysis above, I also conclude that when the trial court does so, the prosecution will have every right to then appeal that sentence, challenging the unintended downward departure. See *People v Akhmedov*, 297 Mich App 745, 748; 825 NW2d 688 (2012). The majority gives no indication to the contrary.

I respectfully dissent.

/s/ Jane E. Markey