

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ISAIAH DARNELL MURRAY,

Defendant-Appellant.

UNPUBLISHED

July 23, 2020

No. 349579

Eaton Circuit Court

LC No. 2017-020358-FH

Before: FORT HOOD, P.J., and JANSEN and TUKEL, JJ.

PER CURIAM.

Defendant, Isaiah Darnell Murray, was convicted of two counts of misdemeanor entering without permission, MCL 750.115(1), and one count of resisting and obstructing, MCL 750.81d(1). On August 30, 2018, defendant was originally sentenced as a third-offense habitual offender, MCL 769.11, to serve two to four years’ imprisonment, consecutive to parole, for the resisting and obstructing conviction.¹

On May 23, 2019, because of an error in his presentence investigation report (PSIR), defendant was resentenced, as a third-offense habitual offender, MCL 769.11, to one year and one day to three years’ imprisonment for the resisting and obstruction conviction. That judgment of sentence did not reflect consecutive sentencing as is required under MCL 768.7a(2), which provides:

If a person is convicted and sentenced to a term of imprisonment for a felony committed while the person was on parole from a sentence for a previous offense, the term of imprisonment imposed for the later offense shall begin to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense.

¹ No sentences were imposed for defendant’s misdemeanor convictions.

Without notice to defendant, on June 26, 2019, the trial court entered an amended judgment of sentence to reflect that defendant's prison sentence was to be served consecutively to "any parole action." Defendant now appeals as of right, arguing that the consecutive sentencing was improper because the trial court corrected a substantive error in the judgment of sentence sua sponte after the judgment was entered. We agree, and therefore we reverse, vacate the June 26, 2019 amended judgment of sentence, and remand to the trial court to reinstate the May 23, 2019 judgment of sentence.

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 901 NW2d 553 (2017).

MCR 6.429(A) provides:

(A) Authority to Modify Sentence: The court may correct an invalid² sentence, on its own initiative after giving the 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. [Footnote added.]

Additionally, 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." However, for substantive mistakes, MCR 6.435(B) provides that "[a]fter giving the parties an opportunity to be heard, and provided it has not yet entered judgment in the case, the court may reconsider and modify, correct, or rescind any order it concludes was erroneous."

Our Supreme Court has been clear that "correcting an invalid sentence by adding a statutorily mandated term is a substantive correction that a trial court may make on its own initiative before judgment is entered." *People v Worthington*, 503 Mich 863; (2018), citing *Comer*, 500 Mich 278; 293-298; 901 NW2d 553 (2017). However, our Supreme Court has been clear that *after* judgment is entered, "an invalid sentence may be corrected only upon the timely filing of a motion to correct an invalid sentence in accordance with MCR 6.429." *Comer*, 500 Mich at 297-298.

² 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).

In this case, consecutive sentencing was required under MCL 768.7a(2); yet the trial court failed to impose consecutive sentencing in its May 23, 2019 judgment of sentence. However, absent a timely motion brought by either party under MCR 6.429, the trial court lacked the authority to amend the judgment of sentence to add consecutive sentencing—a substantive provision—under MCL 768.7a(2).³

The prosecution argues that the trial court’s sua sponte correction was the correction of a clerical error, because consecutive sentencing under MCL 768.7a(2) was included in the August 30, 2018 judgment of sentence, and was discussed at the resentencing hearing. However, our Supreme Court may clear in *Worthington* that “the trial court did not have authority to amend the judgment of sentence after entry to add a provision for consecutive sentencing under MCL 768.7a(2).” *Worthington*, 503 Mich at 863. Because the exact substantive change is present in this case, we are compelled to follow *Worthington*, and the prosecution’s argument is unavailing.

We reverse, vacate the June 26, 2019 amended judgment of sentence, and remand to the trial court to reinstate the May 23, 2019 judgment of sentence. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Kathleen Jansen
/s/ Jonathan Tukel

³ The register of actions in this case reflects that on September 24, 2019, the prosecution filed a motion to correct the judgment of sentence in the trial court. It appears that motion is still pending. Therefore, on remand, the trial court does have an avenue to correct the judgment of sentence to reflect the statutorily required consecutive sentencing