# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEON JEFFERSON JOHNSON,

Defendant-Appellant.

UNPUBLISHED
November 19, 2020

No. 349447
Genesee Circuit Court
LC No. 13-033536-FC

Before: MARKEY, P.J., and METER and GADOLA, JJ.

PER CURIAM.

Defendant was convicted of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(f) (personal injury to the victim and force or coercion is used to accomplish sexual penetration), and two counts of resisting or obstructing a police officer, MCL 750.81d(1). Defendant was sentenced as a fourth-offense habitual offender, MCL 769.12, to 15 to 30 years' imprisonment for the CSC-I conviction and to 6 to 15 years' imprisonment for each conviction of resisting or obstructing a police officer. After a prior appeal,[1] defendant was resentenced to 25 to 37½ years' imprisonment for the CSC-I conviction and to 46 to 180 months' imprisonment for the resisting-or-obstructing convictions. Defendant now appeals by right, primarily arguing that MCL 769.12(1)(a), which mandated his 25-year minimum sentence, is unconstitutional because its application results in a violation of the protection against cruel and/or unusual punishment and did so in this case. We affirm.

Defendant brutally raped a friend's 61-year-old mother whom defendant referred to as "Mom." The sexual assault occurred in defendant's kitchen. Defendant's DNA was recovered during a forensic examination of the victim. The nurse who conducted a sexual assault evaluation testified that there were large vaginal tears, the size of which the nurse had never seen before. There were also signs of blunt force trauma to the vaginal canal. The victim described terrible pain, indicating that her pants were full of blood as a result of the attack. She was found crying,

[1] *People v Johnson*, unpublished per curiam opinion of the Court of Appeals, issued October 22, 2015 (Docket No. 322179).

distraught, anxious, and embarrassed. When confronted by investigating police officers, defendant ran and then refused to comply with orders to put his arms behind his back after he was apprehended. Defendant told police that he did not sexually penetrate the victim, but at trial he changed his story to fit the forensic evidence, claiming that the sexual intercourse was consensual. The jury convicted defendant as indicated above.

In the earlier appeal, defendant argued claims of ineffective assistance of counsel and insufficiency of the evidence; this Court rejected those claims. *People v Johnson*, unpublished per curiam opinion of the Court of Appeals, issued October 22, 2015 (Docket No. 322179), pp 1-4. Defendant also unsuccessfully challenged the scoring of offense variables (OVs) 3, 10, and 13. *Id.* at 4-6. Defendant next argued that the trial court exceeded the guidelines range with respect to the sentences for the resisting-or-obstructing convictions without giving any reasons for the departure as required by law, and this Court agreed, remanding the case for resentencing on those two convictions. *Id.* at 6. In a Standard 4 brief, defendant raised a couple of issues assailing the convictions that did not warrant reversal. *Id.* at 8-10. He also contended that prior record variable (PRV) 2 was not properly assessed, claiming that a prior alleged conviction for a drug crime was inaccurate because the charge had actually been dismissed. *Id.* at 10-11. The panel ruled that "[b]ecause the record is ambiguous, further articulation on whether PRV 2 was correctly scored is required on remand." *Id.* at 11. But this Court rejected defendant's additional Standard 4 claims that the trial court erred in scoring PRV 3 and OVs 4 and 19. *Id.* at 11-12. The prosecutor filed a cross-appeal, maintaining "that, pursuant to MCL 769.12(1)(a), defendant should have been sentenced to a mandatory minimum of 25 years' imprisonment for his CSC 1 conviction because he had previously been convicted of three felonies." *Id.* at 6. Defendant proffered various arguments against the prosecutor's assertion, *id.* at 6-8, but he did not claim that a 25-year minimum sentence would constitute cruel and/or unusual punishment or that MCL 769.12 is unconstitutional. This Court held that "the trial court plainly erred in failing to sentence defendant to a mandatory minimum of 25 years in prison." *Id.* at 8. The panel vacated the CSC-I sentence and remanded "for resentencing in accordance with MCL 769.12(1)(a)." *Id.* Subsequently, the Michigan Supreme Court denied defendant's application for leave to appeal. *People v Johnson*, 503 Mich 853 (2018).

On remand, the trial court did exactly as directed by this Court, resentencing defendant to a minimum term of 25 years' imprisonment for the CSC-I conviction. Defendant did not argue to the trial court that the 25-year minimum sentence violated the prohibition against cruel and/or unusual punishment. The trial court also resentenced defendant to 46 to 180 months' imprisonment for the resisting-or-obstructing convictions. Those particular sentences now fell within the minimum sentence guidelines range. Finally, with respect to PRV 2, the trial court found that there was nothing in the record supporting defendant's claim that a previous drug charge had been dismissed; rather, the record established the existence of a conviction on the charge.

On appeal, defendant argues that his mandatory 25-year minimum sentence for the CSC-I conviction was constitutionally invalid, contending that the sentence violated both his state and federal constitutional rights to be free from cruel and/or unusual punishment. We review de novo as an issue of law whether there has been a violation of the protection against cruel and/or unusual punishment. *People v Benton*, 294 Mich App 191, 203; 817 NW2d 599 (2011). But because the issue was unpreserved, our review is for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Before forging into the specific details of defendant's argument, we must first construct the legal framework to give context to defendant's position.[2] MCL 769.12 provides, in pertinent part, as follows:

> (1) If a person has been convicted of any combination of 3 or more felonies or attempts to commit felonies, whether the convictions occurred in this state or would have been for felonies or attempts to commit felonies in this state if obtained in this state, and that person commits a subsequent felony within this state, the person shall be punished upon conviction of the subsequent felony and sentencing under section 13 of this chapter as follows:
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> (a) If the subsequent felony is a *serious crime* or a conspiracy to commit a serious crime, and 1 or more of the prior felony convictions are *listed prior felonies*, the court shall sentence the person to imprisonment for not less than 25 years. Not more than 1 conviction arising out of the same transaction shall be considered a prior felony conviction for the purposes of this subsection only. [Emphasis added.]

CSC-I is defined as a "serious crime" under MCL 769.12(6)(c). And defendant also has two prior felony drug convictions that qualified as "listed prior felonies" under MCL 769.12(6)(a)(*ii*). Accordingly, defendant was subject to a mandatory 25-year minimum sentence for the CSC-I conviction, and defendant does not dispute that MCL 769.12(1)(a) is applicable in this case.

Defendant maintains that "[t]he mandatory minimum of 25 years violates the prohibitions against cruel and/or unusual punishment because it is disproportionate, does not allow for any consideration [of] the circumstances under which the offense occurred, or consideration of the probability of rehabilitation." Defendant contends that MCL 769.12(1)(a) does not allow a court to take into consideration any individualized factors or mitigating circumstances, which runs contrary to the bedrock principle that a sentence must be individualized. Defendant notes that with respect to the "listed prior felonies," no judicial contemplation of the circumstances surrounding those felonies is permitted. And his qualifying listed prior felonies were drug offenses, not assaultive or violent crimes. Defendant complains that the listed prior felony need not be a violent crime and that the particulars of a person's background, character, and prospects play no role whatsoever under MCL 769.12(1)(a). Although not expressly stated by defendant, it appears from the nature of his arguments that he is making a facial and an as-applied challenge to the constitutionality of MCL 769.12(1)(a).

The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Article 1, Section 16, of the Michigan Constitution states that "[e]xcessive bail shall not be

[2] We initially question whether this issue is appropriately before us. In the prior appeal, the prosecution argued in favor of the application of MCL 769.12(1)(a) in its cross-appeal, and defendant, while contesting the prosecutor's argument on several grounds, did not challenge the constitutionality of MCL 769.12(1)(a), nor claim that a 25-year minimum sentence would be cruel and/or unusual. Nevertheless, we shall address defendant's constitutional argument.

required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained." If a particular punishment is not cruel or unusual under our state constitution, then it necessarily passes muster under the federal constitution. *Benton*, 294 Mich App at 204. "[W]hether a penalty may be considered cruel or unusual is to be determined by a three-pronged test that considers (1) the severity of the sentence imposed and the gravity of the offense, (2) a comparison of the penalty to penalties for other crimes under Michigan law, and (3) a comparison between Michigan's penalty and penalties imposed for the same offense in other states." *Id.*, citing *People v Bullock*, 440 Mich 15, 33-34; 485 NW2d 866 (1992).

Under the Michigan Constitution, the prohibition against cruel or unusual punishment bars the imposition of grossly disproportionate sentences. *Bullock*, 440 Mich at 32.[3] The proportionality test requires inquiry into whether the punishment is so excessive that it is completely unsuitable in relation to the crime. *People v Hallak*, 310 Mich App 555, 572; 873 NW2d 811 (2015), rev'd in part on other grounds 499 Mich 879 (2016). The *Hallak* panel observed:

> The goal of rehabilitation is . . . a consideration. If the punishment thwarts the rehabilitative potential of the individual offender and does not contribute toward society's efforts to deter others from engaging in similar prohibited behavior, it may be deemed excessive. However, the need to prevent the individual offender from causing further injury to society is an equally important consideration. In the end, a penalty that is unjustifiably disproportionate to the crime or unusually excessive should be struck down as cruel or unusual. [*Hallak*, 310 Mich App at 572 (quotation marks and citations omitted).]

"If a statute mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections, the court shall impose sentence in accordance with that statute," and "[i]mposing a mandatory minimum sentence is not a departure . . . ." MCL 769.34(2)(a). "Legislatively mandated sentences are presumptively proportional and presumptively valid." *People v Brown*, 294 Mich App 377, 390; 811 NW2d 531 (2011). And proportionate sentences do not constitute cruel or unusual punishment. *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008). A defendant can only overcome the presumption by presenting unusual circumstances that would render a presumptively proportionate sentence disproportionate. *People v Bowling*, 299 Mich App 552, 558; 830 NW2d 800 (2013). "[S]tatutes are presumed to be constitutional and must be so construed unless their unconstitutionality is readily apparent." *People v Russell*, 266 Mich App 307, 310; 703 NW2d 107 (2005) (quotation marks and citation omitted).

For a facial challenge, a "defendant has the onerous burden to prove that there is no set of circumstances under which the statute is valid." *Hallak*, 310 Mich App at 567. "While the facial-challenge standard is extremely rigorous, an as-applied challenge is less stringent and requires a

[3] We note that there is a distinction between "proportionality" as it relates to the constitutional protection against cruel or unusual punishment, with such proportionality being presumed when a sentence is within the guidelines range, and "proportionality" as it relates to reasonableness review of a sentence, which is not constitutional in nature. *Bullock*, 440 Mich at 34 n 17.

court to analyze the constitutionality of the statute against a backdrop of the facts developed in the particular case." *Id.*

To the extent that defendant is making a facial challenge to MCL 769.12(1)(a), we find no merit to his position. There are sets of circumstances under which MCL 769.12(1)(a) would be constitutionally valid and sound. For example, if a defendant's sentencing offense were CSC-I, and he had three listed prior felony convictions for first-degree arson, torture, and felonious assault, see MCL 769.12(6)(a)(*iii*), without any mitigating circumstances or prospects for rehabilitation, a 25-year mandatory minimum sentence would not be cruel and/or unusual punishment. It would be entirely appropriate and certainly proportional. Defendant argues that the mandatory minimum sentence provision in MCL 769.12(1)(a) is unconstitutional because it precludes consideration of mitigating circumstances, the probability of rehabilitation, and of individualized factors such as a defendant's background and character. We conclude that for purposes of a facial challenge to MCL 769.12(1)(a), this argument fails because there can be a set of circumstances in which none of these considerations are compelling or favor a defendant, e.g., our hypothetical above. To rule otherwise would require vitiation of every statutory provision that mandates the imposition of a particular minimum sentence. Accordingly, we hold that MCL 769.12(1)(a) is not facially unconstitutional. MCL 769.12(1)(a) reflects a legislative determination that the circumstances that implicate a mandatory minimum sentence under the statute pose such a threat to the safety of society absent a lengthy term of imprisonment for the offender that mitigating and individualized factors cannot be considered so as to undermine the Legislature's goal to protect the public. But defendant's argument regarding individualized considerations and criteria and mitigating circumstances could be viable in the context of an as-applied challenge, which issue we next entertain.

With respect to defendant's as-applied challenge, we conclude that it ultimately fails on close examination. First, MCL 769.12(1)(a) is not even implicated unless a defendant is being sentenced for a serious crime, which offenses include homicide, various forms of assault and kidnapping, several degrees of criminal sexual conduct, mayhem, armed robbery, and carjacking. MCL 769.12(6)(c). This aspect alone of MCL 769.12(1)(a) lends support for harsh punishment. MCL 769.12(1)(a) also requires that at least one of the three underlying felonies qualify as a "listed prior felon[y]." All of the offenses identified as a "serious crime" under MCL 769.12(6)(c) are also described as "listed prior felonies" in MCL 769.12(6)(a)(*iii*). But there are also numerous additional "listed prior felonies," including any drug-related crime found in "Article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, that is punishable by imprisonment for more than 4 years." MCL 769.12(6)(a)(*ii*). In the instant case, the main thrust of defendant's argument is that his previous felony drug convictions did not evidence engagement in any violent criminal acts, making the 25-year mandatory minimum sentence for his first instance of felonious violence grossly disproportionate.

The legislatively-mandated minimum sentence was presumptively proportionate, *Brown*, 294 Mich App at 390, and we also note that "a sentence within the guidelines range is presumptively proportionate," *Powell*, 278 Mich App at 323; the top end of the minimum sentence guidelines range for defendant on the CSC-I conviction was 37½ years. Defendant has not presented us with any "unusual circumstances that would render [his] presumptively proportionate sentence disproportionate[,]" *Bowling*, 299 Mich App at 558, let alone grossly disproportionate. We recognize that the underlying drug convictions could perhaps be viewed as being less serious

than many of the other "listed prior felonies" identified in MCL 769.12(6)(a) that entail acts of physical violence; however, even if we characterize the drug offenses as reflecting a lower level of moral culpability, they were nonetheless felonies and they had to be considered in conjunction with the circumstances surrounding the sentencing offense—CSC-I. When defendant's prior felonies are contemplated in conjunction with the violent and horrific rape of the victim that left her injured, bloodied, and distraught, we cannot conclude that the imposition of a 25-year minimum sentence was grossly disproportionate or unusually excessive. Furthermore, returning to defendant's argument that the trial court was not permitted to consider mitigating circumstances, the probability of rehabilitation, and individualized factors such as defendant's background and character, he fails to direct us to anything in the record on those matters that would overcome our conclusion that his sentence was not grossly disproportionate or unusually excessive.

In the context of the three-pronged test for judging whether a penalty is cruel and/or unusual, *Bullock*, 440 Mich at 33-34, the 25-year minimum sentence is certainly severe, but it also equates to the gravity of the CSC-I offense described above and defendant's extensive criminal history. With respect to a comparison of the sentence to other penalties under Michigan law—prong two—one cannot lose sight of the fact that regardless of MCL 769.12(1)(a), defendant could have been sentenced to a minimum term of imprisonment under the guidelines of 37½ years for the crime of CSC-I, which is a life offense, MCL 750.520b(2)(a). Under MCL 750.520b(2)(b), the commission of CSC-I "by an individual 17 years of age or older against an individual less than 13 years of age [is punishable] by imprisonment for life or any term of years, but not less than 25 years." This Court has rejected the claim that the 25-year minimum sentence provided in MCL 750.520b(2)(b), which does not require any criminal history to be applicable, constitutes cruel and/or unusual punishment. *Benton*, 294 Mich App at 203-207. While here we are not concerned with a victim less than 13 years old for purposes of the CSC-I conviction, MCL 769.12(1)(a) requires a criminal history that encompasses at least three prior felony convictions, which reflects a level of egregiousness of behavior that is comparable, at least somewhat, to the conduct addressed in MCL 750.520b(2)(b). This is especially true in the instant case because of the horrific manner in which the sexual assault was perpetrated.

Defendant argues that the 25-year minimum sentence required by MCL 769.12(1)(a) should be deemed cruel and/or unusual punishment just like the lengthy mandatory drug sentences that were ruled unconstitutional by our Supreme Court in *People v Lorentzen*, 387 Mich 167; 194 NW2d 827 (1972), and *Bullock*, 440 Mich 15. The *Lorentzen* Court addressed a statute that provided for a minimum penalty of 20 years' imprisonment for the unlawful sale of marijuana of any quantity, even for a first offense. *Lorentzen*, 387 Mich at 170-171. The Supreme Court held that the compulsory prison sentence of 20 years for a nonviolent crime was so excessive that it shocked the conscience and was unconstitutional. *Id.* at 181. In *Bullock*, our Supreme Court declared a violation of the protection against cruel and/or unusual punishment with respect to a statute that carried a mandatory penalty of life imprisonment without parole for possession of 650 grams or more of any mixture containing cocaine, even for a first offense. *Bullock*, 440 Mich at 21, 37. Considering the unique nature of the personal physical violation involved in the crime of CSC-I and criminal sexual conduct in general, it is difficult, if not inappropriate, to make a comparison to the punishment of drug crimes. Unlike the statutes in *Lorentzen* and *Bullock*, which covered nonviolent drug crimes that stood alone without the need to show prior criminal activity, MCL 769.12(1)(a) requires the commission of a serious crime—violent in nature, three prior

felonies, and proof that at least one of those felonies is a listed prior felony.[4] *Lorentzen* and *Bullock* simply do not support finding a constitutional violation in this case.

Finally, with respect to the third prong and penalties imposed in other states, defendant argues that California's "three strikes law," which the United States Supreme Court upheld in a plurality decision against a cruel-and-unusual-punishment challenge, is distinguishable from MCL 769.12(1)(a). *Ewing v California*, 538 US 11, 30-31; 123 S Ct 1179; 155 L Ed 2d 108 (2003). Pursuant to California's three strikes law, a defendant who was convicted of a felony and had been previously convicted of two or more serious or violent felonies had to be sentenced to an indeterminate term of life imprisonment. *Id.* at 16.[5] In certain circumstances, California law allowed a trial court to reduce "a felony to a misdemeanor either before preliminary examination or at sentencing to avoid imposing a three strikes sentence." *Id.* at 17. In deciding whether to do so, a California judge could consider the nature and circumstances of the defendant's crime, his or her criminal history, and the defendant's character. *Id.* Defendant's theory here is that because MCL 769.12(1)(a) lacks the attributes of California's constitutionally-sound three strikes law, MCL 769.12(1)(a) must be unconstitutional. We reject this logic. As indicated earlier, MCL 769.12(1)(a) requires the commission of a serious, violent crime that is the sentencing offense, along with *three* prior felonies, at least one of which is substantially serious. Although not identical, the Michigan statutory scheme is sufficiently comparable to California's three strikes law with respect to the type of conduct and criminal history that gives rise to a lengthy mandatory sentence.[6] The fact that MCL 769.12(1)(a) does not allow for the exercise of discretion permitted

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[4] Also, life imprisonment without parole, which was the punishment at issue in *Bullock*, is much more harsh than the 25-year penalty in MCL 769.12(1)(a).

[5] The minimum term was set at the greater of (a) three times the term otherwise provided for the current felony conviction, (b) 25 years, or (c) twice the term for the immediate underlying conviction, including any enhancements. *Ewing*, 538 US at 16.

[6] The following passage from *Ewing*, 538 US at 29-30, is equally applicable to the characteristics of MCL 769.12(1)(a) and defendant's criminal history:

> In weighing the gravity of Ewing's offense, we must place on the scales not only his current felony, but also his long history of felony recidivism. Any other approach would fail to accord proper deference to the policy judgments that find expression in the legislature's choice of sanctions. In imposing a three strikes sentence, the State's interest is not merely punishing the offense of conviction, or the "triggering" offense: It is in addition the interest in dealing in a harsher manner with those who by repeated criminal acts have shown that they are simply incapable of conforming to the norms of society as established by its criminal law. To give full effect to the State's choice of this legitimate penological goal, our proportionality review of Ewing's sentence must take that goal into account.
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> Ewing's sentence is justified by the State's public-safety interest in incapacitating and deterring recidivist felons, and amply supported by his own long,

by California law does not persuade us to rule differently, especially where defendant in this case has failed to demonstrate that mitigating circumstances or individualized factors existed that require us to rule that the 25-year minimum sentence constituted cruel and/or unusual punishment.[7] Furthermore, the discretionary aspects of the California law were not even the focus of the United States Supreme Court in concluding that the three strikes law was constitutional.

In sum, we hold that there was no violation of defendant's constitutional right to be free from cruel and/or unusual punishment.

Defendant next argues in a Standard 4 brief that the trial court erroneously assessed 20 points for PRV 2 because his 1998 drug charge was dismissed under MCL 333.7411(1). We disagree. Under the sentencing guidelines, the trial court's findings of fact are reviewed for clear error and must be supported by a preponderance of the evidence. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013); *People v Rhodes (On Remand)*, 305 Mich App 85, 88; 849 NW2d 417 (2014). Clear error is present when the appellate court is left with a firm and definite conviction that an error occurred. *People v Fawaz*, 299 Mich App 55, 60; 829 NW2d 259 (2012). This Court reviews de novo "[w]hether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute . . . ." *Hardy*, 494 Mich at 438; see also *Rhodes*, 305 Mich App at 88. In scoring the factors, a court may consider all record evidence, including the contents of a presentence investigation report (PSIR), plea admissions, and testimony presented at a preliminary examination. See *People v Johnson*, 298 Mich App 128, 131; 826 NW2d 170 (2012).

Under MCL 777.52(1)(b), 20 points must be assessed for PRV 2 if the defendant has "3 prior low severity felony convictions." According to the PSIR, defendant had been convicted of three prior low severity felony offenses, including a 1998 conviction for possession with intent to deliver less than 25 grams of cocaine. Defendant contends that this 1998 conviction should not have been considered because the charge was actually dismissed under MCL 333.7411(1). In *People v Benjamin*, 283 Mich App 526, 530; 769 NW2d 748 (2009), this Court explained the mechanics of MCL 333.7411(1):

> In deferral proceedings under MCL 333.7411(1), an individual either pleads guilty or is found guilty of certain controlled substance offenses. The trial court does not adjudicate guilt when the plea is tendered. Instead, the trial court defers proceedings and places the individual on probation. If the individual complies with the terms of probation, the trial court discharges the individual without an serious criminal record. [Quotation marks, citations, alteration, and ellipses omitted.]

[7] To be clear, with respect to an as-applied constitutional challenge to MCL 769.12(1)(a), our opinion is not to be construed as determining that there is no situation or context in which application of the statutory provision results in cruel and/or unusual punishment.

adjudication of guilt and dismisses the proceedings. If the individual fails to fulfill the terms of probation, the trial court enters an adjudication of guilt.

If defendant is correct and the 1998 charge was actually dismissed under MCL 333.7411(1), then the claimed conviction should not have been considered in the assessment of PRV 2. See MCL 333.7411(1) ("Discharge and dismissal under this section shall be without adjudication of guilt and, except as otherwise provided by law, is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime[.]"); MCL 777.50(4)(a); *People v James*, 267 Mich App 675, 679-680; 705 NW2d 724 (2005).

This Court previously addressed this argument and noted that at the sentencing hearing, the prosecution indicated that the matter was reviewed and that defendant had pleaded guilty " 'under 7411 but that was revoked because he continually violated probation.' " *Johnson*, unpub op at 11. The panel, however, also observed that the "Notes" section of the PSIR referred to a discharge on April 23, 2001. *Id*. Because of the ambiguity, this Court remanded the matter and directed the trial court to further articulate whether PRV 2 was correctly scored. *Id*.

On remand, the trial court reviewed the transcripts, the register of actions, and the judgment of sentence from the 1998 case and concluded that each reflected that defendant did not have "7411 status." The trial court noted that on April 6, 1998, defendant pleaded guilty to possession with the intent to deliver less than 25 grams of cocaine. The plea agreement reflected that defendant was being offered "7411 status" by the prosecution and, according to the trial court, the 1998 sentencing court was not prepared to grant "7411 status" at the time. And on May 13, 1998, defendant was sentenced, and the sentencing court expressly denied defendant's motion to be sentenced under MCL 333.7411(1). The trial court found that neither the register of actions nor the judgment of sentence from the 1998 case reflected that defendant pleaded guilty under MCL 333.7411(1). We have no basis in the record to rule otherwise, and defendant has not presented us with any pertinent argument to reverse the trial court's conclusion. Accordingly, the 20-point assessment for PRV 2 is upheld.

In his Standard 4 brief, defendant also presents challenges to the scoring of PRVs 3, 5, 6, and 7 and OVs 3, 4, 10, 13, and 19. As reflected earlier in this opinion, many of these variables were challenged in the earlier appeal, all of which challenges this Court rejected. The law of the case doctrine precludes us from revisiting any of the prior rulings on the OVs and PRVs. See *People v Hermiz*, 235 Mich App 248, 254; 597 NW2d 218 (1998). Additionally, defendant's arguments regarding the PRVs and OVs exceed the scope of the remand order. "[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). This Court did not open the door to arguments beyond those matters encompassed by the remand order. The scope of the remand order was limited to resentencing defendant pursuant to MCL 769.12(1)(a), articulating the reasons for departing from the guidelines on the resisting-or-obstructing sentences, and resolving the ambiguity regarding PRV 2. We also note that none of defendant's arguments have substantive merit.

Defendant further argues that the trial court erred by considering his previous felony conviction for fleeing and eluding police for purposes of scoring PRV 2 and sentencing him as a fourth-offense habitual offender. Again, this argument exceeds the scope of the remand order and is woefully lacking in merit. Finally, defendant contends that the trial court erred in resentencing him to a 25-year minimum sentence for the CSC-I conviction by doing so on its own initiative. This argument is nonsensical, as this Court ordered the trial court to resentence defendant in conformity with MCL 769.12(1)(a), *Johnson*, unpub op at 8; the court did not do so on its own initiative. See *Int'l Business Machines Corp v Dep't of Treasury*, 316 Mich App 346, 352; 891 NW2d 880 (2016) (Under the "rule of mandate," a trial court "must strictly comply with, and may not exceed the scope of, a remand order."). Reversal is unwarranted.

We affirm.

/s/ Jane E. Markey
/s/ Patrick M. Meter
/s/ Michael F. Gadola