

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL TERREAL DAVIS,

Defendant-Appellant.

UNPUBLISHED

November 19, 2020

No. 349549

Wayne Circuit Court

LC No. 13-010643-01-FC

Before: BOONSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Defendant was convicted by jury of second-degree murder, MCL 750.317, two counts of unlawful imprisonment, MCL 750.349b, and possession of a firearm during the commission of a felony (felony-firearm), 750.227b. He was originally sentenced to serve concurrent terms of 28 to 50 years for the second-degree murder conviction and 10 to 15 years for each of the unlawful imprisonment convictions, and a consecutive two-year term for the felony-firearm conviction. In a previous appeal, this Court affirmed defendant’s convictions, but determined that “the facts admitted by defendant or necessarily found by the jury verdict were ‘insufficient to assess the minimum number of [offense variable (OV)] points necessary for . . . defendant’s score to fall in the cell of the sentencing grid under which he . . . was sentenced,’ ” and remanded to the trial court for possible resentencing following a *Crosby*¹ hearing requiring “the trial court to determine whether that court would have imposed a materially different sentence but for the constitutional error” and resentencing if the “answer to that question is yes.” *People v Davis*, unpublished per curiam opinion of the Court of Appeals, issued May 24, 2016 (Docket No. 325565), pp 5-7, quoting *People v Lockridge*, 498 Mich 358, 395, 397; 870 NW2d 502 (2015). On remand, rather than considering whether it “would have imposed a materially different sentence but for the constitutional error,” the lower court considered defendant’s conduct since his imprisonment and, finding it laudable, reduced defendant’s sentence for second-degree murder to 25 to 50 years’ imprisonment. Defendant again appealed, arguing that his attorney had provided ineffective assistance during the *Crosby* hearing by agreeing that the offense variables had been properly

¹ *United States v Crosby*, 397 F3d 103, 117-118 (CA 2, 2005).

assessed even though the trial court had scored the sentencing guidelines using judicial fact-finding. This Court determined that any objection to the scoring of the guidelines by defendant's trial counsel would have been futile because the trial court was not prohibited from scoring the guidelines using judicial fact-finding. However, this Court remanded the case for further proceedings because, contrary to *Crosby* requirements, the trial court had improperly considered defendant's postsentencing conduct in prison to reduce his minimum sentence by three years when resentencing was not required. *People v Davis*, unpublished per curiam opinion of the Court of Appeals, issued July 24, 2018 (Docket No. 337221). The Court noted that the trial court had "determined that it would not have imposed a materially different sentence under the advisory sentencing guidelines," *id.* at 3, that resentencing was therefore not warranted, and that reversal was therefore required with a remand to "enter a judgment of sentence reinstating [defendant]'s original sentence." *Id.* at 4. On remand, the trial court did so, and defendant now again appeals as of right.

On appeal, defendant argues that his sentence was based on improperly assessed offense variables, requiring resentencing, and that his trial counsel provided ineffective assistance by failing to object to the errant OV assessments. However, "[w]hen a case is remanded by an appellate court, proceedings on remand are limited to the scope of the remand order." *People v Canter*, 197 Mich App 550, 567; 496 NW2d 336 (1992). On remand, the trial court must "comply strictly with the mandate of the appellate court according to its true intent and meaning." *People v Blue*, 178 Mich App 537, 539; 444 NW2d 226 (1989), citing *People v Bellanca*, 43 Mich App 577, 579; 204 NW2d 547 (1972). "[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 (On Remand)*, 206 Mich App 477, 481; 522 NW2d 880 (1994). However, "the scope of the second appeal is limited by the scope of the remand." *People v Jones*, 394 Mich 434, 435-436; 231 NW2d 649 (1975); *Canter*, 197 Mich App at 567.

On remand, this Court clearly instructed: "the trial court shall enter a judgment of sentence reinstating Davis's original sentence." Because this case was remanded for the limited purpose of reinstating defendant's original sentence, and the scope of this appeal is limited to the trial court's decision to reinstate the original sentence, the issues raised by defendant are beyond the scope of the remand and may not be considered on appeal.

Affirmed.

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello