

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN MICHAEL DEGEN,

Defendant-Appellant.

UNPUBLISHED

September 14, 2026

10:02 AM

No. 374313

Oakland Circuit Court

LC No. 2023-284049-FH

Before: BAZZI, P.J., and PATEL and ACKERMAN, JJ.

PER CURIAM.

Defendant, Shawn Michael Degen, appeals by leave granted¹ the order denying his motion to correct an invalid sentence. We affirm, but remand to the trial court for the ministerial task of correcting the judgment of sentence.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises from multiple incidents of theft that Degen perpetrated in Independence Township, Michigan in the summer of 2022. Among these incidents, Degen entered and stole property from two garages and two parked vehicles. A search of Degen’s home and vehicle revealed that he was in possession of numerous items that were reported stolen. Police also discovered boxes containing ammunition and a credit card belonging to another individual at his home. Degen was eventually arrested, and while detained at the police station he attempted to remove his handcuffs, permanently damaging them in the process.

¹ This Court initially denied Degen’s application for leave to appeal. *People v Degen*, unpublished order of the Court of Appeals, entered March 5, 2025 (Docket No. 374313). Degen then sought leave to appeal in the Michigan Supreme Court. The Supreme Court remanded the case to this Court “for consideration as on leave granted.” *People v Degen*, ___ Mich ___, ___; 25 NW3d 125 (2025).

In September 2023, the parties approached the trial court with a “plea agreement for delayed sentence,” under which Degen would plead guilty—as a third habitual offender, MCL 769.11—to two counts of first-degree home invasion, MCL 750.110a(2); breaking and entering a motor vehicle causing damage, MCL 750.356a(3); larceny from a motor vehicle, MCL 750.356a(1); being a felon in possession of ammunition, MCL 750.224f(6); malicious destruction of police property, MCL 750.377b; and possession of another person’s financial-transaction device with the intent to use, deliver, circulate, or sell it, MCL 750.157p.

Under the plea agreement, the prosecution requested a delay in sentencing for 11 months, during which Degen was required to comply with several conditions including his participation in mental-health treatment, alcohol and drug testing, employment, and payment of restitution, in addition to any other conditions set by the court. Upon Degen’s successful completion of the conditions, the prosecution would agree to reduce his first-degree home invasion charges to third-degree home invasion, MCL 750.110a(4). The agreement also provided: “There is no sentencing agreement. This agreement contains the entire understanding of the parties and there have been no promises or threats, oral or otherwise, other than those appearing in this writing.” Further, the agreement did “not bind any government agency except the Oakland County Prosecutor’s Office.”

The trial court reviewed Degen’s rights on the record. It specifically asked Degen whether it “made [him] any promises with regard to [his] sentence,” to which Degen responded, “No, Your Honor.” The court confirmed the same with the prosecution and defense counsel:

The Court. All right. People and defense counsel agree that the Court has made no representation with regard to the Defendant’s possible sentence?

[The Prosecution]. That is correct, Your Honor.

[Defense Counsel]. Yes, Your Honor.

The court subsequently accepted Degen’s plea and delayed his sentencing for 11 months.

Degen complied with the conditions of his plea agreement during the delay period and the parties appeared before the court for sentencing in October 2024. The presentence investigation report (PSIR) recommended the court grant the terms of the delay and sentence Degen to two days in jail with two days of jail credit. The parties both indicated agreement with the recommendation, and defense counsel emphasized that Degen was “a candidate for probation” given his adherence to the conditions. The court dismissed the first-degree home invasion charges and added convictions for third-degree home invasion pursuant to the agreement. However, it declined to adopt the sentencing recommendation, which it “[found] to be appalling.”

It noted that Degen “received an extraordinarily generous delay of sentence, which involve[d] the dismissal of two counts of home invasion first degree” While the court recognized and was pleased that Degen complied with the conditions of his delay of sentence, it “note[d] that the defendant has engaged in serial violations of the criminal law for a long time.” Accordingly, the trial court sentenced Degen to serve concurrent jail terms of 365 days for each of his third-degree home invasion, breaking and entering a motor vehicle causing damage, larceny from a motor vehicle, felon in possession of ammunition, and malicious destruction of police

property convictions; and 273 days for his possession of another's financial-transaction device conviction.

Degen thereafter moved to correct his sentence, arguing that it was invalid because the trial court violated MCL 771.1(2) when it sentenced him to one year of incarceration in jail. Degen also contended that his sentence was invalid under MCL 769.31(b) and MCL 769.34(4) because he should have been sentenced to an intermediate sanction, and that his sentencing guidelines for Offense Variable (OV) 13 and OV 16 were improperly scored.

The trial court denied the motion, reasoning that Degen's sentence was within the guidelines range, there was no sentencing agreement between the parties, and the court made no representations to Degen about his sentence. Further, the court complied with MCL 771.1(2) by dismissing the first-degree home invasion convictions, which provided leniency by dramatically reducing the guidelines range. Though the trial court acknowledged that it did not explicitly state the reason for the delay of sentence at the time of the plea under MCL 771.1(2), it maintained that the record obviously demonstrated the reason for the delay, namely, to allow Degen "the opportunity to complete the terms and conditions of the Delay of Sentence to avail himself of the Plea Agreement." The trial court rejected Degen's argument that his guidelines were improperly scored. It also concluded that Degen's sentence did not violate MCL 769.31(b) or MCL 769.34(4) because the guidelines range for one of his offenses exceeded 18 months and the court otherwise articulated reasonable grounds to sentence him to a term of incarceration rather than impose an intermediate sanction. This appeal followed.

II. SENTENCING

Degen argues that the trial court's sentence of 365 days in jail was invalid because he complied with the terms of his delayed sentence agreement and was entitled to an intermediate sanction under a proper scoring of the guidelines. We disagree.

We review sentencing issues for an abuse of discretion. *People v Sabin*, 242 Mich App 656, 660; 620 NW2d 19 (2000). "A trial court abuses its discretion when it selects an outcome outside the range of reasonable and principled outcomes." *People v Maben*, 313 Mich App 545, 552; 884 NW2d 314 (2015) (quotation marks and citation omitted). "We review de novo questions of law at sentencing as well as issues of statutory interpretation." *People v Jackson*, 348 Mich App 280, 285; 18 NW3d 360 (2023). "Under the sentencing guidelines, a trial court's findings of fact are reviewed for clear error and must be supported by a preponderance of the evidence." *People v Carlson*, 332 Mich App 663, 666; 958 NW2d 278 (2020) (quotation marks and citation omitted). "A trial court's findings of fact are clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake." *Id.* "We review de novo whether the facts as found were adequate to satisfy the statutory scoring conditions." *Id.* "When calculating the sentencing guidelines, a court may consider all record evidence, including the contents of a PSIR, plea admissions, and testimony presented at a preliminary examination." *People v McChester*, 310 Mich App 354, 358; 873 NW2d 646 (2015).

A. DELAYED SENTENCE

Degen argues that the trial court's sentence violated MCL 771.1(2) by imposing a term of incarceration in jail, contrary to the recommendation of the probation department and his compliance with the terms of his delayed sentence agreement.² MCL 771.1(2), which governs delayed sentencing in criminal matters, provides:

In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation, such as participation in a drug treatment court under . . . MCL 600.1060 to 600.1088. When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court's records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay.

"The purpose of delaying a defendant's sentence pursuant to this statutory provision is entirely for the benefit of the convicted defendant—it is to give the defendant an opportunity to prove to the court that he is worthy of probation or other leniency compatible with the ends of justice and rehabilitation." *People v Smith*, 496 Mich 133, 139; 852 NW2d 127 (2014) (quotation marks omitted).

Degen contends that the imposition of a jail sentence was inconsistent with the purpose of MCL 771.1(2) because he proved his eligibility for probation by complying with the conditions of his delayed sentence agreement.³ The parties do not dispute that Degen complied with the conditions of the delay. However, nothing in the statute requires a trial court to sentence a defendant to probation after the delay, even when a defendant complies with the conditions of the

² The prosecution argues that Degen's appeal is moot because he has already served his sentence. However, we already rejected this argument, which was initially asserted in a motion to dismiss filed by the prosecution. We stated that, "[a]lthough technically moot, the issues are of some public significance and likely to recur and yet evade appellate review if dismissed as moot on the completion of the defendant's sentence." *People v Degen*, unpublished order of the Court of Appeals, entered January 27, 2026 (Docket No. 374313). We decline to reconsider the issue.

³ On appeal, the prosecution challenges whether MCL 771.1(2) is even applicable, arguing that "[t]hough the People included a delay in the sentence as part of the terms . . . the agreement was solely a plea agreement with no agreement on the terms of sentencing." However, the prosecution did not raise this argument in the trial court, nor does it explain how the issue amounts to plain error given that the court denied Degen's motion to correct an invalid sentence. See *People v Allen*, 507 Mich 597, 604; 968 NW2d 532 (2021) ("Unpreserved, nonconstitutional errors are reviewed for plain error."). Further, the trial court analyzed the applicability of MCL 771.1(2) below, making it appropriate to address the issue on appeal.

delay. Instead, the Legislature provided that a defendant may demonstrate eligibility “for probation *or other leniency*” under the statute. MCL 771.1(2) (emphasis added).

In this case, by delaying sentencing, the trial court provided Degen the opportunity to take advantage of the delayed sentence agreement, thus giving him “an opportunity to prove to the court his . . . eligibility for probation or other leniency compatible with the ends of justice and [his] rehabilitation,” consistent with MCL 771.1(2). Having demonstrated his eligibility for leniency at the end of the 11-month period, the trial court reduced Degen’s most serious charges from first-degree home invasion to third-degree home invasion, which resulted in a considerable reduction of his sentencing guidelines range. In other words, the delay gave Degen an opportunity to prove his eligibility for the leniency of a reduction in the home invasion charges, which in turn, provided leniency by reducing the guidelines range.

Degen cites *People v Cannon*, 145 Mich App 100, 103; 377 NW2d 354 (1985), for the proposition that “[t]he purpose of a delayed sentence is to give the defendant an opportunity to satisfy the trial court that he or she can fairly be placed on probation instead of sentenced to prison.” However, this Court has since clarified “that the *Cannon* Court’s view of the statute was too limited in scope since the statute also authorized a delay to give the defendant an opportunity to prove his eligibility for other leniency compatible with the ends of justice and the rehabilitation of the defendant.” *People v Saenz*, 173 Mich App 405, 409; 433 NW2d 861 (1988) (quotation marks omitted).

Degen also relies on the holding in *Cannon*, 145 Mich App at 104, that “incarceration in a county jail cannot be a valid condition of a delayed sentence.” He argues that, because jail is not a valid condition to impose during a delay, the imposition of a jail sentence following a delay cannot be permitted where a defendant complies with the necessary conditions. The *Cannon* Court explained that being in jail does not assist the sentencing court in determining whether a defendant should be placed on probation after a delay because “spending time in jail does not reflect upon either the willingness or the ability of the defendant to voluntarily comply with terms of a probation order.” *Id.*

Degen’s argument overlooks the significant distinction between the conditions a trial court may impose during the delay and the sentence imposed after the delay. While the delay conditions are intended “to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice,” a final sentence has no such purpose and is determined after the delay has ended. MCL 771.1(2). Indeed, this Court has cautioned about the distinction between conditions of a delay and the sentence ultimately imposed. See *Saenz*, 173 Mich App at 409 (“Nevertheless, jail incarceration cannot be a valid condition because it is the precise type of punishment authorized by the Legislature for the offense. . . . The three sentencing options are jail, state prison, or probation with up to one year in jail.”). Nor does the language of the statute suggest any limitation on the trial court’s sentencing authority upon completion of the delay. See *Smith*, 496 Mich at 142 (“After the one-year statutory limitation elapses, sentencing may no longer be delayed for the purpose of permitting a defendant the opportunity to prove that he is worthy of leniency, and the judge is required to sentence defendant as provided by law.”). Accordingly, a sentence involving incarceration in jail following a defendant’s successful completion of a delay period is not necessarily improper under MCL

771.1(2), and Degen has not established that the trial court was obligated to sentence him to probation.

Degen also argues that his sentence violated MCL 771.1(2) because the trial court failed to state the reason for the delay on the record. MCL 771.1(2) provides that “[w]hen sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court’s records.” The trial court recognized that it did not enter a specific order to that effect, but stated the conditions enumerated in the judgment of delayed sentence paired with the plea agreement clearly demonstrated that the delay was to allow Degen the opportunity to avail himself of the plea agreement. We conclude that any procedural error arising from the trial court’s failure to explicitly state the reason for the delayed sentence is harmless. As discussed above, Degen cannot demonstrate that the trial court’s sentence substantively violated MCL 771.1(2), and the record supports that the delay was entered to allow Degen the opportunity to benefit from the plea agreement—which he did by having his first-degree home invasion charges dismissed. Accordingly, any error did not result in a miscarriage of justice to warrant disturbing the judgment of sentence. See MCL 769.26 (providing that no judgment should be set aside or reversed for procedural error “unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice”).

B. INTERMEDIATE SANCTION

Degen claims that the trial court violated MCL 769.31(b) and MCL 769.34(4) by imposing a term of incarceration in jail instead of an intermediate sanction. MCL 769.34(4) provides that “[i]ntermediate sanctions must be imposed” under certain circumstances, including:

If the upper limit of the recommended minimum sentence range for a defendant determined under the sentencing guidelines set forth in chapter XVII is 18 months or less, the court shall impose an intermediate sanction unless the court states on the record reasonable grounds to sentence the individual to incarceration in a county jail for not more than 12 months or to the jurisdiction of the department of corrections for any sentence over 12 months. [MCL 769.34(4)(a).]

MCL 769.31(b) defines “intermediate sanction” as “probation or any sanction, other than imprisonment in a county jail, state prison, or state reformatory, that may lawfully be imposed.” “The statute includes a long list of possible sanctions, including probation and rehabilitation programs. Jail is not among the options.” *People v Pinson*, 344 Mich App 305, 311; 1 NW3d 815 (2022). See also *People v Stauffer*, 465 Mich 633, 635; 640 NW2d 869 (2002) (“An ‘intermediate sanction’ can mean a number of things, but it does not include a prison sentence.”).

Degen argues that the court should have imposed an intermediate sanction because the top of his guidelines range for all of his convictions was less than 18 months, except for his conviction of malicious destruction of police property, which he contends was improperly scored.⁴ In this

⁴ We disagree with Degen’s contention that his guidelines were improperly scored. He argues that OV 13 should have been assessed 5 points rather than 10. However, Degen’s relevant criminal

case, the recommended minimum sentence range was 0 to 16 months for the third-degree home invasion, breaking and entering a motor vehicle causing damage, and larceny from a motor vehicle convictions; 0 to 13 months for the felon in possession of ammunition conviction; 0 to 25 months for the malicious destruction of police property conviction; and 0 to 9 months for the possession of another's financial-transaction device conviction.

Even assuming that the trial court was required to impose an intermediate sanction for Degen's offenses, it was permitted to sentence him to no more than a year of incarceration in jail, provided that it "state[d] on the record reasonable grounds to sentence [Degen] to incarceration in a county jail for not more than 12 months" MCL 769.34(4)(a). In this case, the trial court extensively detailed its reasoning for imposing a one-year jail term at the sentencing hearing, which it summarized in its opinion and order denying Degen's motion to correct an invalid sentence:

[T]he reasons for the sentencing included (1) a very generous reduction in the charges, having counts 1 and 2 dismissed, (2) having served four jail terms, (3) having served five probationary terms, (4) two prior felonies, (5) a juvenile home, (6) his criminal history beginning in 2006, (7) receiving [Holmes Youthful Training Act] and losing it, (8) violating his probation in the past, (9) participating in [Special Alternative Incarceration] boot camp, and (10) another home invasion in 2022.

Degen argues that the reasons articulated by the trial court were improperly based on factors that were already accounted for in calculating his Prior Record Variable (PRV) score, contrary to MCL 769.34(3)(b) (prohibiting sentencing courts from basing a departure on a characteristic "already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the [PSIR], that the characteristic has been given inadequate or disproportionate weight.").⁵ For each of his offenses, Degen received a score of 20 points for PRV 7, which is appropriate when "[t]he offender has 2 or more subsequent or concurrent convictions" for felony offenses. MCL 777.57(1)(a).

While the trial court considered Degen's prior felony convictions in imposing a one-year jail term, the other reasons it articulated were not accounted for in Degen's PRV score. Further, the trial court was permitted to consider dismissal of the more serious first-degree home invasion

history—two convictions of third-degree home invasion, and convictions for breaking and entering a motor vehicle causing damage, larceny from a motor vehicle, malicious destruction of police property, and possession of another's financial-transaction device—meet the statutory requirement for assessing 10 points. See MCL 777.43(1)(d) (providing that OV 13 be assessed 10 points if "[t]he offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property"). Further, while Degen challenges the scoring of OV 16, a reduction of one point would not affect the OV level or his sentencing guidelines range.

⁵ We note that although the trial court's sentence was within the guidelines range, imposition of a jail or prison sentence when the guidelines provide for an intermediate sanction is effectively evaluated as an upward departure. See *People v Muttscheler*, 481 Mich 372, 375; 750 NW2d 159 (2008).

charges, along with Degen’s history of recidivism and previous convictions for the same types of offenses. See *People v Horn*, 279 Mich App 31, 44-45; 755 NW2d 212 (2008) (“[R]epeated offenses and failures at rehabilitation—constitute an acceptable justification for an upward departure.”); *id.* at 45 (noting that an upward departure may be justified by “factors includ[ing] a history of recidivism, and obsessive or uncontrollable urges to commit certain offenses”); *People v Armstrong*, 247 Mich App 423, 426; 636 NW2d 785 (2001) (permitting a trial court to consider the dismissal of more serious charges pursuant to a guilty plea when determining whether departure is justified). Contrary to Degen’s assertion, the trial court adequately stated reasonable grounds to sentence him to one year of incarceration in a county jail under MCL 769.34(4)(a).

C. JUDGMENT OF SENTENCE

On appeal, the prosecution notes that the trial court’s amended judgment of sentence is incorrect because it does not include Degen’s convictions and sentences for third-degree home invasion. Pursuant to the plea agreement, the trial court added two convictions of third-degree home invasion, for which it sentenced Degen on the record. However, these convictions and sentences are not reflected on the amended judgment of sentence. When a judgment of sentence misstates the crime for which the defendant was convicted, the proper remedy is to remand for correction. *People v Avant*, 235 Mich App 499, 521; 597 NW2d 864 (1999). We therefore remand to the trial court to amend the judgment of sentence accordingly.

Affirmed and remanded for the ministerial task of correcting Degen’s judgment of sentence. We do not retain jurisdiction.

/s/ Mariam S. Bazzi
/s/ Sima G. Patel
/s/ Matthew S. Ackerman