

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES N. ROBINSON,

Defendant-Appellant.

UNPUBLISHED

December 18, 1998

No. 206304

Recorder's Court

LC No. 97-001679

Before: Griffin, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial felony conviction for fleeing and eluding a police officer, second offense, MCL 257.602a(3); MSA 9.2302(1)(3), for which he was sentenced to one to four years' imprisonment. We reverse defendant's conviction and remand for entry of a conviction for fleeing and eluding as a misdemeanor and for resentencing.

Defendant argues that the trial court erred in enhancing his sentence, because more than five years elapsed between the date of his first conviction for fleeing and eluding and the present conviction for the same offense. We agree.

At all times relevant to the present case, MCL 257.602a; MSA 9.2302(1) provided in pertinent part as follows:¹

(1) A driver of a motor vehicle who is given by hand, voice, emergency light, or siren a visual or audible signal by a police or conservation officer, acting in the lawful performance of his or her duty, directing the driver to bring his or her motor vehicle to a stop, and who willfully fails to obey that direction by increasing the speed of the motor vehicle, extinguishing the lights of the motor vehicle, or otherwise attempting to flee or elude the officer, is guilty of a misdemeanor, and shall be punished by imprisonment for not less than 30 days nor more than 1 year, and, in addition, may be fined not more than \$1,000.00 and may be ordered to pay the costs of the prosecution. . . .

* * *

(3) A person who violates subsection (1) *within 5 years of a prior conviction* of a violation of subsection (1) is guilty of a felony, and shall be punished by imprisonment for a mandatory minimum term of not less than 1 year and a maximum term of not more than 4 years, and by a fine of not more than \$10,000.00, together with the costs of the prosecution. [MCL 257.602a(1), (3); MSA 9.2302(1)(1), (3) (emphasis added).]

On January 14, 1992, defendant pleaded nolo contendere to a charge of fleeing and eluding; however, the judgment of sentence was not entered until October 16, 1992. In the present case, defendant was found guilty of fleeing and eluding on July 10, 1997, and the judgment of sentence was entered on August 12, 1997. At issue here is whether the date of the finding of guilt, or the date of the judgment of sentence, constitutes the date of conviction for purposes of sentence enhancement under MCL 257.602a; MSA 9.302(1).

Our Supreme Court has answered this statement unequivocally: “The conviction is the finding of guilt. Sentence is not an element of the conviction but rather a declaration of its consequences.” *People v Funk*, 321 Mich 617, 621; 33 NW2d 95 (1948). See also *People v Bettistea*, 181 Mich App 194, 199; 448 NW2d 781 (1989). In the present case, defendant’s first conviction occurred on January 14, 1992, more than five years before July 10, 1997, the date of his second conviction. Accordingly, the trial court erred in entering a conviction pursuant to MCL 257.602a(3); MSA 9.2302(1)(3) and in sentencing defendant to the enhanced term provided by that subsection.²

Defendant’s conviction is reversed, and the matter is remanded for entry of a conviction for fleeing and eluding as a misdemeanor pursuant to MCL 257.602a(1); MSA 9.2302(1)(1), and for resentencing consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Richard A. Bandstra

¹ In 1996 PA 587, the Legislature rewrote this section effective June 1, 1997.

² Defendant’s remaining challenges -- that his sentence for fleeing and eluding, second offense was improper because the prosecutor failed to establish the existence of a prior offense beyond a reasonable doubt at the bench trial, and that defendant’s enhanced sentence is inconsistent with the trial court’s findings of fact and verdict -- are rendered moot by our decision to reverse defendant’s felony conviction and to remand this matter to the trial court.