

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDALL GRIFFIN,

Defendant-Appellant.

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UNPUBLISHED

August 1, 2006

No. 260928

Oakland Circuit Court

LC Nos. 02-187036-FH

02-186747-FH

02-186748-FH

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

PER CURIAM.

Defendant appeals by delayed leave granted the sentence of 2 to 30 years in prison imposed on February 18, 2004, following his plea of guilty to a probation violation. We vacate that sentence and remand for reinstatement of the original sentence of probation.

Defendant pleaded guilty to three counts of uttering and publishing, MCL 750.249, and being a fourth habitual offender, MCL 769.11. On November 26, 2002, he was sentenced to three years' probation, with the first 183 days in jail, and with credit for 79 days served.

Defendant pleaded guilty to violating probation, and on April 30, 2003, he was sentenced to serve one year in jail, with credit for 156 days served. He was also ordered to enter and complete the Oakland County Zero Tolerance Program. On January 28, 2004, defendant pleaded guilty to violating probation by failing to complete the Zero Tolerance Program, failing to complete mental health treatment, and failing to pay costs and fees. The court sentenced defendant to one year in jail, with credit for 242 days, and continued his probation. Defendant was also to be placed on a tether for six months after he was released from jail.

While defendant was in jail, his probation agent learned that defendant did not have a place to live after he was released, and that he had a number of convictions that were not included in the presentence report.<sup>1</sup> The probation department requested a resentencing on the violation of probation.

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<sup>1</sup> Defendant apparently pleaded guilty to these charges on January 22, 2003, May 3, 2003, and  
(continued...)

Defendant was resentenced on February 18, 2004. Defendant indicated that although he could not live with his family, he had other options. The court sentenced defendant to 2 to 30 years in prison on each conviction of uttering and publishing, with credit for 365 days.

Defendant argues that he is entitled to reinstatement of the original judgment of sentence of probation because the trial court lacked the authority to modify a valid sentence after it was imposed. We agree, vacate the sentence of imprisonment, and remand for reinstatement of the sentence of probation.

Once a sentence has been imposed, the trial court's ability to alter that sentence is severely limited. *People v Councell*, 194 Mich App 192, 193-194; 486 NW2d 350 (1992). MCR 6.429(A) provides that a court may correct an invalid sentence, but the court may not modify a valid sentence after it has been imposed except as provided by law. *People v Moore*, 468 Mich 573, 579; 664 NW2d 700 (2003); *People v Wybrecht*, 222 Mich App 160, 166-167; 564 NW2d 903 (1997). A sentencing judge's misapprehension of the law can be a ground for finding a sentence to be invalid. *Moore, supra* at 579; *Wybrecht, supra* at 167. In addition, as defendant admits, our Supreme Court has held that sentences based on inaccurate information are invalid. See *People v Miles*, 454 Mich 90, 96, 98-99; 559 NW2d 299 (1997).

Defendant likens this case to *Councell, supra*. There, the defendant was originally sentenced to four years' probation. *Id.* at 193. When the defendant refused to sign the probation order and refused to pay restitution, the court resentenced him to 30 to 48 months in prison. *Id.* This Court found that the trial court lacked authority to resentence the defendant where the original sentence of probation was valid. *Id.* at 194.

Here, had the trial court based its decision to resentence defendant on the fact that the presentence information report contained invalid information about defendant's criminal history, and had this fact been verified, we would affirm the trial court's decision to resentence defendant. However, there was no challenge to the validity of the original sentence of probation or any showing that the trial court's original sentence was invalid. Instead, based on the discussion at resentencing, we conclude that defendant's probation agent requested the resentencing primarily, if not solely, because defendant could not live with his mother and fulfill the tether condition. The trial court did not discuss its decision to resentence, and simply imposed the new sentence. We also agree with defendant that it has not been shown that defendant's inability to reside with his mother was a mistake of fact made at the initial sentencing. Defendant's living arrangements were not discussed during the earlier hearing.

Further, the challenged sentence cannot be justified as the result of a separate probation revocation. Even if the failure to secure a residence to support a tether is considered a violation of probation, the trial court was required to satisfy MCL 771.4 by filing a new probation violation charge. *Id.* And following *Councell, supra*, the failure to comply with a condition of probation does not render a sentence invalid.

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(...continued)

January 22, 2004. Defendant revealed the existence of the 2004 conviction to the trial court during his January 28, 2004, hearing.

We vacate and remand. We do not retain jurisdiction.

/s/ Janet T. Neff  
/s/ Richard A. Bandstra  
/s/ Brian K. Zahra