STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 9, 2007
v	No. 270484 Wayne Circuit Court
STANLEY WINSTON BROCK, Defendant-Appellant.	LC No. 02-003261-01

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted a circuit court order that reinstated his probation, effectively rescinding a previous order that discharged him before the scheduled expiration of the five-year probationary term in October 2007. We affirm.

Pursuant to a plea and sentence agreement, defendant pleaded nolo contendere to attempted false certification, MCL 257.903; MCL 750.92. The agreement stated "5 years probation, no early termination or release . . . ." The trial court referred to this provision at the time of the plea, and defendant repeatedly acknowledged that he was familiar with the terms of the agreement that he had signed.

At sentencing, the court did not specifically mention that the probation could not be terminated early, but noted, "You're on five years[']probation." The order of conviction and sentence and the order of probation dated October 3, 2002, do not include a provision prohibiting early discharge from probation.

Less than three years after sentencing, the probation department filed a motion for discharge from probation. The court entered an order dated April 12, 2005, discharging defendant from probation. The prosecution moved for reinstatement of defendant's probation, arguing that the early termination of probation was contrary to the parties' agreement and had occurred as a result of a clerical error. Defendant argued that the trial court did not have jurisdiction over the matter because it had already discharged defendant from probation. In addition, defendant argued that the court had not incorporated all parts of the agreement in the sentence, that the order had not been appealed or amended, and that the time for doing so had expired. Defendant claimed that there was no "clerical mistake" in the discharge order.

The court maintained that it had accepted the parties' agreement, which included five years' probation with no early termination. The court believed that it had orally pronounced the restriction at sentencing. According to the court, the absence of the provision in the order was not conclusive because the order is "only evidence of what the Court ruled." The court explained that defendant's release was inadvertent and that the court rules allowed for the correction of mistakes. The court granted the prosecution's motion to reinstate probation.

This Court granted defendant's delayed application for leave to appeal.

Defendant claims that the order reinstating his probation violated Michigan law and due process. He also argues that, after the discharge had been entered and the prosecution did not file a timely challenge to it, the trial court lost jurisdiction to reinstate his probation. His issues present questions of law, which this Court reviews de novo. *People v Walker*, 234 Mich App 299, 302; 593 NW2d 673 (1999); *People v Harris*, 224 Mich App 597, 599; 569 NW2d 525 (1997).

The trial court has authority to correct mistakes in an order pursuant to MCR 6.435(A), which states:

> Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party, and after notice if the court orders it.

The court's order discharging defendant from probation contrary to the parties' agreement was an "error[] arising from oversight or omission . . . ." As explained by the trial court, the discharge was "totally inadvertent. It was simply a mistake."

Defendant cites authority indicating that conditions of probation must be written and that revoking probation for a violation of a condition for which the defendant lacked notice denies the defendant due process. See e.g., *People v Stanley*, 207 Mich App 300; 523 NW2d 892 (1994). However, the due process concerns are not implicated here because defendant was not charged with violation of a condition for which he lacked notice.

Defendant argues that, once the 14-day period for filing a motion for reconsideration of the discharge order expired, the case was terminated and the trial court "lost jurisdiction" to reopen the matter. He primarily relies on *People v Barfield*, 411 Mich 700; 311 NW2d 724 (1981) and *People v Gregorczyk*, 178 Mich App 1; 443 NW2d 816 (1989).

Barfield is an example of application of the general rule that a trial court cannot set aside a valid sentence. See *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997); MCR 6.429(A). However, MCL 771.2(2) confers broad authority on the trial court to modify an order of probation. See *People v Johnson*, 210 Mich App 630, 634; 534 NW2d 255 (1995); *People v Kendall*, 142 Mich App 576; 370 NW2d 631 (1985). The "exceptional degree of flexibility" afforded to the trial court in administering probation that allows modification after sentencing, *Kendall*, *supra* at 579, contrasts with the limitations that exist with respect to modification of other sentences. Because of the distinction in the court's authority, *Barfield*, *supra*, does not demonstrate that defendant is entitled to relief in the present case.

Gregorczyk, supra, does not persuade us that defendant is entitled to relief. This Court has limited *Gregorczyk, supra*, to its facts. *People v Hill (Aft Remand)*, 202 Mich App 520; 509 NW2d 856 (1993); *People v Lamb (Aft Remand)*, 201 Mich App 178, 180; 506 NW2d 7 (1993). The present case does not implicate the double jeopardy or separation of powers concerns that were involved in *Gregorczyk*. Defendant was not deprived of sentence credit, and the case does not involve executive commutation of a sentence.

In this case, the reinstatement of probation was ordered in accordance with the plea and sentence agreement of the parties. Had the omission of the provision precluding early termination been recognized before the order that discharged defendant from probation, the court would have had the authority to amend the order pursuant to MCL 771.2(2). Here, the omission was not noticed, and the court inadvertently discharged defendant from probation. Defendant has not shown that the court committed legal error by requiring him to complete the sentence in accordance with the plea and sentence agreement and from which he was inadvertently discharged.

Affirmed.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly