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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 02, 2026 2:30 PM
v	No. 375620 St. Clair Circuit Court
TRAVOR AUSTIN KILLIAN, Defendant-Appellant.	LC No. 23-000235-FH

Before: MURRAY, P.J., and BOONSTRA and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his resentencing after remand by this Court. Defendant was convicted by jury of delivery or manufacture of methamphetamine, MCL 333.7401(2)(b)(*i*); tampering with evidence, MCL 750.483a(6)(b); maintaining a drug house, MCL 333.7405(1)(d); and three counts of resisting or obstructing a police officer, MCL 750.81d(1). Defendant was originally sentenced, as a fourth-offense habitual offender, MCL 769.12, to concurrent terms of 18 to 30 years' imprisonment for the delivery or manufacture of methamphetamine conviction; 6 to 30 years' imprisonment for the tampering with evidence conviction; 2 to 15 years' imprisonment for the maintaining a drug house conviction; and 2 to 15 years' imprisonment for each resisting or obstructing a police officer conviction. On remand for resentencing, for among other things, to allow defendant the opportunity for a meaningful allocution, he was again sentenced to the same prison terms. We again vacate defendant's sentences and remand to the trial court for resentencing.

I. FACTUAL AND PROCEDURAL BACKGROUND

We briefly summarized the factual background of this case in our previous opinion ("*Killian I*") as follows:

> This case arose from a police search of defendant's residence in accordance with a search warrant. Inside the residence, police found methamphetamine in defendant's room along with two digital scales, spoons, and hypodermic needles. Moreover, defendant unsuccessfully attempted to flee from the police when they were executing the search warrant.

> Defendant was found guilty of the crimes listed above, and the trial court confirmed that defendant was a fourth-offense habitual offender at the end of trial. At sentencing, the trial court initially gave defendant the opportunity for allocution, but interrupted him multiple times throughout. . . . [*People v Killian*, unpublished per curiam opinion of the Court of Appeal, issued November 20, 2024 (Docket No. 367272), p 1.]

On appeal, defendant argued that the trial court erred as a matter of law when it referred to the habitual-offender enhancement as a conviction and denied him the opportunity to allocute. *Id*. at 2. We concluded that the trial court misspoke when referring to the habitual-offender enhancement as a conviction, but the error was harmless because the trial court understood how the habitual-offender enchantment operated. *Id*. at 2-3. However, we concluded that the trial court denied defendant his right to allocute by continually interrupting him to challenge his statements and lecture him. *Id*. at 4-5. Therefore, we vacated his sentences and remanded to the trial court "for resentencing with a full opportunity for allocution." *Id*. at 6. We also noted: "We recognize that the trial court is not precluded from resentencing defendant to the same sentence if it determines that the previous sentence still is proper in light of his complete allocution." *Id*. at 6 n 2.

On remand, defendant filed a resentencing memorandum and requested a minimum sentence of 10 years so he could maintain his sobriety and participate in rehabilitation programs. Defendant also objected to the scoring of offense variable (OV) 13, MCL 777.43; and OV 19, MCL 777.49. The trial court entered an order declining to address these issues, stating that they were "beyond the scope of the remand issued by the Court of Appeals," and "[r]esentencing of the Defendant will be limited to providing Defendant with the opportunity to allocute." The prosecution also filed a resentencing memorandum, essentially concurring with the trial court's order but asserting OV 13 and OV 19 were properly scored in any event.

At resentencing, defendant was provided an opportunity to allocute without interruption. Defendant explained he attempted to become sober, but tragic events in his life caused him to turn to drugs as a coping mechanism. Although he sought help from his parole officer, the resources available did not address the easy access he had to drugs while on the streets. Defendant was grateful for being imprisoned, claiming that it allowed him to break his habit. He requested a lesser sentence so he could participate in rehabilitation programs unavailable to him because of the length of his original sentence. The trial court commended defendant's progress and efforts but noted that his offenses were severe. Thus, the trial court resentenced defendant as delineated above, and this appeal followed.

II. SCOPE OF REMAND AND REASSIGNMENT

Defendant argues that the trial court erred when it interpreted the scope of remand as limited to allocution alone. Defendant also argues that he is entitled to remand for resentencing before a different judge. We agree with the first argument but disagree with the second.

A. STANDARD OF REVIEW

"Whether a trial court followed an appellate court's ruling on remand is a question of law that this Court reviews de novo." *People v Lampe*, 327 Mich App 104, 111; 933 NW2d 314 (2019) (quotation marks and citation omitted).

B. ANALYSIS

1. SCOPE OF REMAND

Defendant argues that the trial court erred when it limited his resentencing to simply allow his allocution. Defendant's argument has merit. "When an appellate court remands a case with specific instructions, it is improper for a lower court to exceed the scope of the order." *People v Russell*, 297 Mich App 707, 714; 825 NW2d 623 (2012). "Following a remand from this Court, '[t]he power of the lower court on remand is to take such action as law and justice may require so long as it is not inconsistent with the judgment of the appellate court.' " *Lampe*, 327 Mich App at 111, quoting *People v Fisher*, 449 Mich 441, 446-447; 537 NW2d 577 (1995).

In this case, as in *Lampe*, "[b]y ordering 'resentencing' without any specific instructions or any prohibitions on scoring OVs, this Court returned the case to the trial court in a presentence posture, allowing the trial court to consider every aspect of defendant's sentences de novo." *Lampe*, 327 Mich App at 112. See also *People v Rosenberg*, 477 Mich 1076, 1076 (2007) ("Once the Court of Appeals vacated the defendant's original sentence and remanded for resentencing, the case was before the trial court in a presentence posture, allowing for objection to any part of the new sentence."); *People v Williams (After Second Remand)*, 208 Mich App 60, 65; 526 NW2d 614 (1994) ("When a case is remanded from our Court because the entire sentence is invalid, every aspect of the sentence is before the judge de novo unless the remand indicates otherwise.").

The trial court determined that *Killian I* limited the scope of remand to allocution. However, *Killian I* simply stated that "we remand this case to the trial court for resentencing with a full opportunity for allocution" and specifically "vacate[d] defendant's sentence." *Killian*, unpub op at 6. In other words, while we specifically noted that defendant was entitled to a full opportunity to allocute, we never limited remand for that purpose. Further, footnote two of *Killian I* did not limit the scope of remand, but rather expressly recognized the implicit proposition that the trial court retained the authority to resentence defendant to the same sentences after allocution if it again deemed the original sentences appropriate.

Simply put, as noted in *Lampe*, *Rosenberg*, and *Williams*, when a case is remanded for resentencing without specific prohibitions, the parties are placed in a presentence posture, permitting a de novo view of the defendant's sentencing. *Lampe*, 327 Mich App at 112; *Rosenberg*, 477 Mich at 1076; *Williams*, 208 Mich App at 65. This includes, but is not limited to, challenges to OV scores. See *Lampe*, 327 Mich App at 112. Accordingly, we again remand this case to the trial court for resentencing, which should be considered a de novo sentencing proceeding. See *Williams*, 208 Mich App at 65. On remand, defendant is entitled to raise such issues as those raised in his March 2025 resentencing memorandum. See *id*.

2. REASSIGNMENT

Defendant requests that he be assigned a different judge on remand because this is the trial judge's second time sentencing him with errors requiring remand. We respectfully decline to do so. "When a case is remanded for resentencing, the reviewing court may hold that resentencing should be carried out by a different judge." *People v Dixon-Bey*, 340 Mich App 292, 303; 985 NW2d 904 (2022). This Court applies the following test to determine whether resentencing should occur before a different judge:

> (1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether

> reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness. [*People v Hill*, 221 Mich App 391, 398; 561 NW2d 862 (1997) (quotation marks and citation omitted).]

With regard to the first factor, whether the trial judge would have substantial difficulty disregarding previous views, we acknowledge that this is the second time the trial judge made an error requiring resentencing. See *id*. However, in the matter before us now, the trial judge did not disregard the instructions of *Killian I*. Rather, the trial judge provided defendant a meaningful opportunity for allocution. In other words, the trial judge did not disregard *Killian I*, and her reason for limiting remand, while incorrect, was not unreasonable. Moreover, there is nothing in the resentencing record to suggest any type of judicial frustration or bias against defendant. Therefore, we have no reason to suspect that the trial judge will be unable to properly conduct a de novo sentencing proceeding on remand.

With regard to the second factor, reassignment to preserve the interest of justice, there is no evidence of animosity between defendant or the trial judge. See *id*. To the contrary, defendant agreed with the trial judge's lecture at his original sentencing and said that her comments positively affected him. Finally, with regard to the third factor, whether reassignment would entail unnecessary waste and duplication, we conclude that reassignment would be a waste of resources. See *id*. As the trial judge noted at resentencing, she was familiar with the case. A new judge would have to substantially review the entire record to obtain the same familiarity and level of understanding.

Accordingly, while this is the second remand for this case, there is nothing in the record to establish that reassignment is warranted.

III. CONCLUSION

For the reasons stated above, we vacate defendant's sentences and again remand this case to the trial court for resentencing.[1] We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Mark T. Boonstra
/s/ Michael J. Riordan

[1] Accordingly, a new pre-sentence report may be prepared.