

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 204595

Oakland Circuit Court

TODD EUGENE STEINBERG,

LC No. 94-133144 FH

Defendant-Appellee.

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Before: Griffin, P.J. and Gribbs and Talbot, JJ.

TALBOT, J. (dissenting).

I respectfully dissent. While I agree with the majority that the trial court's findings with respect to defendant's postincarceration conduct were not clearly erroneous, I would hold that the trial court abused its discretion when it determined that this single objective and verifiable factor in defendant's favor constituted a substantial and compelling reason for its downward departure from the statutory presumptive minimum sentence.

The Michigan Supreme Court has instructed that the Legislature's use of the strong language in the phrase "substantial and compelling reasons" indicates that downward deviations were contemplated only for exceptional cases. *People v Fields*, 448 Mich 58, 68; 528 NW2d 176 (1995); *People v Johnson (On Remand)*, 223 Mich App 170, 172-173; 556 NW2d 28 (1997). Thus, it is improper for a sentencing court to consider in isolation a single positive aspect of a defendant's record without articulating why this factor, given the defendant's record as a whole, provides a substantial and compelling basis for excepting the defendant from the legislative mandated sentencing regime. See *Johnson, supra* at 173-174. Here, defendant's fourth habitual offender status represents a significant counterweight against his successes while incarcerated. Accordingly, I would conclude that the reason given by the trial court for departing below the presumptive minimum sentence does not warrant a departure.

Moreover, given the majority's conclusion that the trial court erroneously considered defendant's "mind set" and the probation officer's recommendation, the proper remedy would be to remand for a determination whether there are substantial and compelling reasons to deviate

when only appropriate factors are considered. See *Fields, supra* at 80; *Johnson, supra* at 175; *People v Perry*, 216 Mich App 277, 283; 549 NW2d 42 (1996).

I would reverse and remand for resentencing.

/s/ Michael J. Talbot