

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KENNETH TELLO,

Defendant-Appellee.

UNPUBLISHED

March 30, 2001

No. 226218

Jackson Circuit Court

LC No. 99-097010-FC

Before: Holbrook, Jr., P.J., and McDonald and Saad, JJ.

PER CURIAM.

Defendant Kenneth Tello was charged with two counts of armed robbery, MCL 750.529; MSA 28.797, first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), unlawfully driving away an automobile (“UDAA”), MCL 750.413; MSA 28.645, and four counts of possession of a firearm during the commission of a felony (“felony-firearm”), MCL 750.227b; MSA 28.424(2). Defendant pleaded guilty to all charges and was sentenced to two terms of twelve to thirty years’ imprisonment for the armed robberies, ten to twenty years for the first-degree home invasion, two to five years for the UDAA, and four terms of two years each for the felony-firearm convictions. The felony-firearm sentences were to be served concurrently to each other but consecutively to the other four sentences. The sentencing guidelines recommended a minimum prison term of 225 to 375 months (18 years, 9 months to 31 years, 3 months) for defendant’s armed robbery convictions. Plaintiff appeals by leave granted based on the sentencing judge’s downward departure from the legislative guidelines.

The crimes in this case occurred on November 3, 1999; the statutory sentencing guidelines codified at MCL 769.34; MSA 28.1097(3.4) apply to crimes committed after January 1, 1999. MCL 769.34(1), (2); MSA 28.1097(3.4)(1), (2); *People v Greaux*, 641 Mich 339, 342 n 5; 604 NW2d 327 (2000). The statute requires that any departure from the guidelines be supported by “substantial and compelling reasons.” MCL 769.34(3); MSA 28.1097(3.4)(3). The statute further requires this Court to remand for resentencing if it finds the trial court did not have a substantial and compelling reason for departing from the appropriate sentence range. MCL 769.34(11); MSA 28.1097(3.4)(11).

Substantial and compelling reasons exist only in exceptional cases. *People v Babcock*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 223624, issued December 26, 2000), slip op, 5, citing *People v Fields*, 448 Mich 58, 67-68; 528 NW2d 176 (1995). A factor must be both

substantial *and* compelling; the reasons justifying departure should “keenly” or “irresistibly” grab our attention, and we should recognize them as being “of considerable worth” in deciding the length of a sentence. *Id.* The factors relied on by the trial court must be objective and verifiable. *Id.*

The trial court identified three reasons for departing from the guidelines: (1) defendant’s age, (2) the influence of drugs on defendant, and (3) the principle of “truth in sentencing.” Because this Court cannot determine as a matter of law that the trial court’s stated factors for departure were objective and verifiable, we must vacate defendant’s sentence and remand for resentencing. MCL 769.34(11); MSA 28.1097(3.4)(11). On remand the trial judge is free to impose any minimum sentence within the appropriate guidelines range, or to depart from that range if there is a substantial and compelling reason to do so.

Defendant’s judgment of sentence for the armed robbery convictions is vacated and the matter remanded for resentencing. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Gary R. McDonald

/s/ Henry William Saad