

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARVELL D. BAKER,

Defendant-Appellant.

UNPUBLISHED

December 18, 2001

No. 229332

Wayne Circuit Court

LC No. 99-012425

Before: White, P.J., and Talbot and E.R. Post*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carrying a concealed weapon, MCL 750.227, and third-degree fleeing and eluding a police officer, MCL 257.602a(3)(a). The trial court sentenced him to eighteen months' to five years' imprisonment on both convictions. Defendant appeals as of right, contending that his sentence was disproportionately harsh. We vacate his sentence and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Because this offense took place in November 1999, defendant's sentence is governed by the statutory sentencing guidelines that took effect January 1, 1999. *People v Leversee*, 243 Mich App 337, 349; 622 NW2d 325 (2000); MCL 769.34(1) and (2). MCL 769.34(11) directs appellate courts to limit their review of sentences departing from the statutory guidelines range to whether the trial court had a "substantial and compelling reason" to depart from the guidelines. *People v Babcock*, 244 Mich App 64, 74; 624 NW2d 479 (2000). To constitute a substantial and compelling reason for departing from the statutory sentencing guidelines range, a reason must be objective and verifiable and should "'keenly' or 'irresistibly' grab our attention." *Id.* at 75, quoting *People v Fields*, 448 Mich 58, 67; 528 NW2d 176 (1995). The statutory guidelines do not contemplate further review under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). *Babcock, supra* at 77-78.

The trial court's reasons for departure in this case amounted to an assertion that defendant's actions were foolish and potentially dangerous. These are not substantial and compelling reasons for a departure from the guidelines range. Accordingly, we vacate defendant's sentence and remand for resentencing. *Babcock, supra* at 80. On remand, the trial court is free to impose any minimum sentence within the appropriate guidelines range or to

* Circuit judge, sitting on the Court of Appeals by assignment.

depart from that range upon articulating a substantial and compelling reason to do so. If the court imposes a sentence that exceeds the guidelines range, the court shall advise defendant orally and in writing that he may appeal the sentence as provided by law on grounds that it is longer or more severe than the guidelines range. MCL 769.34(7).

Vacated and remanded for resentencing. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post