

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOYCE D. GRAVES,

Defendant-Appellant.

UNPUBLISHED

March 12, 2002

No. 229655

Wayne Circuit Court

LC No. 00-002956

Before: Bandstra, P.J., and Murphy and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from his sentence of two to ten years in prison imposed on his conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. We vacate the sentence and remand this matter for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After a bench trial, the trial court convicted defendant of assault with intent to do great bodily harm less than murder, and possession of a firearm during the commission of a felony, MCL 750.227b. The legislative sentencing guidelines recommended a minimum term range of ten to twenty-three months for the assault conviction. The trial court imposed the mandatory two-year term for the conviction of felony-firearm, and sentenced defendant to twenty-four months to ten years in prison for the assault conviction. The trial court did not acknowledge that the twenty-four-month term was a departure from the sentencing guidelines, and gave no reason for imposing that term.

The legislative sentencing guidelines apply to offenses committed on or after January 1, 1999. MCL 769.34(1). In most instances, a trial court is required to impose a minimum sentence within the calculated guidelines range. MCL 769.34(2)(a) and (b). A trial court may depart from the guidelines if substantial and compelling reasons exist to do so. MCL 769.34(3). To constitute a substantial and compelling reason for departing from the guidelines, the reason must be objective and verifiable, and must irresistibly hold the attention of the court. *People v Babcock*, 244 Mich App 64, 75; 624 NW2d 479 (2000). Further, the reason must justify the particular departure at issue. *People v Hegwood*, 465 Mich 432, 437 n 10; 636 NW2d 127 (2001).

We vacate defendant's sentence of twenty-four months to ten years for the assault conviction, and remand for resentencing on that conviction. The twenty-four-month term constitutes a departure from the guidelines. The trial court did not acknowledge the departure, stated no reasons for departing from the guidelines, and in fact stated no reasons for imposing that particular term. The sentencing information report signed by the trial court indicates that the sentence did not constitute a departure from the guidelines. We cannot determine whether the trial court intended to sentence defendant within the guidelines and inadvertently failed to do so, or whether the trial court intended to exceed the guidelines but failed to articulate its reasons for doing so. The trial court's failure to state substantial and compelling reasons for departing from the guidelines mandates that the matter be remanded for resentencing. MCL 769.34(11).

Defendant's sentence for assault with intent to do great bodily harm less than murder is vacated, and this matter is remanded for resentencing. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ William B. Murphy

/s/ Christopher M. Murray