

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERICK MANNERS,

Defendant-Appellant.

UNPUBLISHED

February 10, 2004

No. 243034

Wayne Circuit Court

LC No. 01-009820-01

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

MEMORANDUM.

Defendant appeals as of right from his bench trial conviction for third-degree fleeing and eluding, MCL 257.602a(3), and possession of a firearm during the commission of a felony, MCL 750.227b. We reverse and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that he was denied the effective assistance of counsel where his trial attorney failed to object to the scoring of the sentencing guidelines. Although defendant failed to preserve a scoring issue for appeal, MCL 769.34(10); MCR 6.429(C), the issue can be addressed in the context of an ineffective assistance of counsel claim. *People v Harmon*, 248 Mich App 522, 530; 640 NW2d 314 (2001). A defense attorney's failure to argue the proper sentencing guidelines scoring may satisfy the prejudice prong of the ineffective assistance of counsel test. *Glover v United States*, 531 US 198; 121 S Ct 696; 148 L Ed 2d 604 (2001).

To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001); *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

The prosecution has agreed that two of the sentencing variables, PRV 4 and OV 13, were erroneously scored. A reasonably competent attorney should have discovered that the number of prior juvenile adjudications and the pattern of felonious criminal activity were scored in error. Defendant's sentencing guideline range should have been 0 to 9 months, rather than 7 to 23 months. Defendant's minimum sentence of fifteen months was outside the proper guidelines

range, and there is no suggestion of a substantial and compelling reason to deviate from the guidelines. The length of the sentence imposed was a direct result of counsel's ineffectiveness in failing to challenge the guidelines scoring, and resulted in prejudice to defendant. Consequently, we vacate defendant's sentence for the third-degree fleeing and eluding conviction and the matter is remanded to the trial court for resentencing within the proper sentencing guidelines range or articulation of substantial and compelling reasons for departure.¹

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

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen

¹ If ineffective assistance of counsel is established, the remedy must be tailored to the injury suffered. *People v Whitfield*, 214 Mich App 348, 354; 543 NW2d 347 (1995), after remand 228 Mich 659; 579 NW2d 465 (1998).