

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTHONIO MOORE,

Defendant-Appellee.

UNPUBLISHED

June 29, 2004

No. 242463

Wayne Circuit Court

LC No. 01-008233-01

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

PER CURIAM.

Plaintiff appeals as of right a sentence of probation entered following defendant's conviction for kidnapping a child. MCL 750.350. We vacate the sentence and remand for resentencing.

At sentencing, the trial court scored the statutory guidelines at 42 to 87 months. However, the trial court departed from the sentencing guidelines, relying on defendant's steady employment history, the fact that his problems were linked to alcohol use, and that probation provided a better means of rehabilitation than further incarceration.

A sentencing court may depart from the appropriate sentence range established under the sentencing guidelines if the court has a substantial and compelling reason for the departure, and states the reason on the record. MCL 769.34(3). The existence of a particular factor is a factual determination reviewed for clear error. *People v Babcock*, 469 Mich 247, 264; 666 NW2d 231 (2003). The determination that a factor is objective and verifiable is reviewed as a matter of law. *Id.* The determination that the objective and verifiable factors constitute substantial and compelling reasons to depart from the statutory minimum sentence is reviewed for abuse of discretion. *Id.* at 265. Substantial and compelling reasons exist only in exceptional cases. Reasons justifying departure should keenly or irresistibly grab the court's attention and be recognized as having considerable worth in determining the length of a sentence. *Id.* at 257.

We conclude that there were insufficient objective and verifiable factors to establish a substantial and compelling reason for deviating from the sentencing guidelines. The trial court erred in determining that defendant's employment history and alcohol use made this an exceptional case justifying a departure. *People v Hornsby*, 251 Mich App 462, 474; 650 NW2d 700 (2002). Further, whether probation or incarceration would provide a better vehicle for defendant's rehabilitation is a subjective factor that does not justify departure.

Defendant's sentence is vacated, and the matter is remanded for resentencing. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Pat M. Donofrio