

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ORDELL KEYS, JR.,

Defendant-Appellant.

UNPUBLISHED
December 6, 2005

No. 254642
Wayne Circuit Court
LC No. 03-013742-01

Before: Gage, P.J., and Hoekstra, and Murray, JJ.

Gage, P.J. (*dissenting*).

I respectfully dissent from the majority's conclusion that resentencing is not necessary. Defendant was convicted of larceny of property with a value of \$1,000 or more but less than \$20,000, MCL 750.356(3)(a), and sentenced as a fourth habitual offender, MCL 769.12. The statutory sentencing guidelines established a minimum term range of twelve to forty-eight months, and the trial court sentenced defendant to life in prison. The trial court justified the departure on the basis of defendant's extensive criminal record.

If a trial court's departure from the sentencing guidelines is not proportionate to the seriousness of the defendant's conduct and his criminal history, the departure is not necessarily justified by the articulation of a substantial and compelling reason. *People v Babcock*, 469 Mich 247, 264; 666 NW2d 231 (2003). While I am mindful of defendant's extensive criminal record and that MCL 769.12 authorizes life in prison, I find that the trial court was not justified in sentencing defendant to life in prison. I believe that the sentence imposed is disproportionate to the crime committed, larceny of a traffic control device. A sentence of life in prison should be reserved for the most egregious offenders.

I would remand for resentencing within the guidelines.

/s/ Hilda R. Gage