

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM WHATELEY,

Defendant-Appellant.

UNPUBLISHED

November 13, 2007

No. 274095

Wayne Circuit Court

LC No. 06-003070-01

Before: Zahra, P.J., and White and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his sentence of 40 to 60 months in prison imposed on his underlying conviction of aggravated stalking, MCL 750.411i, following conviction for a probation violation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of aggravated stalking following a bench trial. The victim was defendant’s former girlfriend. The trial court did not convict defendant of being a third habitual offender, MCL 769.11, as the prosecutor had charged, and it originally sentenced defendant to two years’ probation—a sentence three years shorter than the probationary period required by statute. MCL 750.411i(4). Defendant was originally sentenced on July 11, 2006. On July 24, 2006, a hearing was held to correct the sentence to five years’ probation and allow the victim an opportunity to speak on the record.

Less than two months after his conviction, on September 6, 2006, defendant again harassed the victim. The victim spotted him outside her workplace, “casing” the establishment and “gunning” his engine. Defendant entered a plea of not guilty to the charge, and the trial court granted defendant a \$50,000 personal recognizance bond on September 19, 2006. At a hearing three days later, the probation department informed the trial court that defendant had been arrested the previous day for again menacing the victim. The trial court heard more testimony of incidents that occurred between September 6 and defendant’s arrest and found by a preponderance of the evidence that defendant had violated his probation no fewer than four times in little over two months.

The original statutory sentencing guidelines for the underlying offense of aggravated stalking (without any habitual offender adjustments) recommended a minimum term range of 7 to 23 months. In imposing sentence, the trial court noted that in the three days between the time

defendant was arraigned on the charge of probation violation and the date of the hearing on the charge, he returned to harass the victim. The trial court sentenced defendant to 40 to 60 months in prison, commenting that defendant was “irresponsible” and “blew it.”

The statutory sentencing guidelines apply to a sentence imposed after a probation violation. *People v Hendrick*, 472 Mich 555, 560; 697 NW2d 511 (2005). A trial court may depart from the sentencing guidelines if it articulates a substantial and compelling reason to do so on the record. MCL 769.34(3). A substantial and compelling reason for departing is a rare reason that must be objective and verifiable, must irresistibly grab the court’s attention, and must be of considerable worth in determining the length of the sentence. *People v Babcock*, 469 Mich 247, 257; 666 NW2d 231 (2003). However, a trial court is not required to use any “magic” words in articulating its substantial and compelling reasons for exceeding the guidelines. *Id.* at 259 n 13. Probation violations are objective and verifiable demonstrations of a defendant’s recalcitrance and general disregard for the law. *People v Schaafsma*, 267 Mich App 184, 185-186; 704 NW2d 115 (2005). This general rule is especially applicable when a defendant violates probation with the very conduct that put him on probation in the first place.

In this case, the trial court’s sentence exceeded the guidelines by seventeen months. The forty months imposed by the trial court represents the greatest minimum sentence allowed.¹ See *People v Tanner*, 387 Mich 683, 690; 199 NW2d 202 (1972); MCL 769.34(2)(b). At sentencing, the trial court specifically pointed to defendant’s failure to adhere to the original terms of probation as well as his immediate resumption of his harassment when he was released on bond. The trial court did not repeat the recommended guidelines range on the record, did not state that it was exceeding the guidelines, and did not specifically address proportionality. However, it gave defendant the severest sentence possible under the law and specifically found that defendant had been given two separate opportunities to refrain from stalking since his recent sentencing but showed no ability to reform his behavior. Under the circumstances, the trial court sufficiently articulated that the repeated probation violations and defendant’s impulsive violation of the protective order during his release on bond provided substantial and compelling reasons for departing seventeen months from the guidelines range. MCL 769.34(3); *Babcock*, *supra* at 258.

Moreover, we are certain that if we remanded for clarification, the trial court would again impose the maximum allowable penalty on the basis of these substantial and compelling reasons, so the trial court’s failure to adhere to a standard set of technical recitations at sentencing is harmless. *Schaafsma*, *supra* at 186.

¹ While the trial court did not use the magic words, “this is a departure sentence,” it is clear from the lower court record that the trial court imposed the maximum minimum sentence available to him under the law. In our opinion, the trial court sufficiently articulated substantial and compelling reasons for its departure.

Affirmed.

/s/ Brian K. Zahra

/s/ Helene N. White

/s/ Peter D. O'Connell