

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRENCE LASALE BRASWELL,

Defendant-Appellant.

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UNPUBLISHED

January 8, 2008

No. 271210

Wayne Circuit Court

LC No. 05-012013-01

Before: Saad, P. J., and Owens and Kelly, JJ.

Kelly, J. (*dissenting in part and concurring in part.*)

I respectfully disagree that the trial court erred in departing from the sentencing guidelines because it failed to articulate its reasons for the departure. In all other respects, I concur with the majority.

Defendant bases his challenge solely on the assertion that the trial court failed to articulate its reasons for departure; he does not claim that the trial court's reasons were not substantial and compelling. The record shows that the trial court acknowledged the fact that the sentencing guidelines range was 29 to 85 months. After observing that defendant shot his own relative, he refused to accept responsibility for the shooting, and the jury had given him "a break" in convicting him of the lesser-included charge of assault with intent to do great bodily harm less than murder, the trial court stated that it was imposing a sentence of 10 to 20 years. In imposing this departure, the trial court stated, "that's because of the guidelines. Five prior felonies." As our Supreme Court has stated:

Although the trial court must articulate a substantial and compelling reason to justify its departure, the trial court is not required to use any formulaic or "magic" words in doing so. Although the better practice may be for the trial court to specifically state that "[t]he substantial and compelling reason that justifies my twelve-month departure here is . . . ,"

something short of this may well suffice as long as the trial court has articulated a substantial and compelling reason that justifies its departure. In any event, however it is articulated, the quality of the trial court's statement must be sufficient to allow for effective appellate review. [*People v Babcock*, 469 Mich 247, 259 n 13; 666 NW2d 231 (2003).]

While it would be a better practice for the trial court to specifically state that its reasons are substantial and compelling and provide an detailed explanation for its reasons, effective appellate review is not precluded in the instant case because the trial court provided its reason for departing, namely that the guidelines did not adequately take into account defendant's five prior felonies. Therefore, I do not believe resentencing is warranted. I would affirm.

/s/ Kirsten Frank Kelly