

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JARRELL YOUNG,

Defendant-Appellant.

UNPUBLISHED

May 6, 2008

No. 277865

Wayne Circuit Court

LC No. 06-014396-01

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

A jury convicted defendant of assault with intent to do great bodily harm less than murder, MCL 750.84, as a lesser included offense of assault with intent to commit murder, MCL 750.83, and acquitted him of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to six to ten years in prison. Defendant appeals as of right his sentence. Because the trial court failed to sentence defendant within the applicable legal framework as set forth in the legislative sentencing guidelines scheme, and rejected the binding nature of that scheme absent substantial and compelling reasons for departure, we vacate defendant's sentence and remand for resentencing. Further, under the facts of this case, we conclude that a different judge should sentence defendant. This appeal is being decided without oral argument under MCR 7.214(E).

Assault with the intent to do great bodily harm less than murder is an offense covered by the sentencing guidelines. MCL 777.16d. Therefore, the trial court had to impose a minimum sentence within the range provided by the sentencing guidelines unless it had a substantial and compelling reason for departing from the recommendation and stated it on the record. *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007).

In the present case, the trial court imposed a minimum sentence on defendant that substantially exceeded the high end of the recommended minimum sentence. Further, the trial court did not even attempt to articulate a substantial and compelling reason for the departure. Instead, it expressed general disagreement with the application of the sentencing guidelines and frustration with the fact that the jury found defendant not guilty of the more serious charge of assault with the intent to commit murder and not guilty of armed robbery and felony firearm. Because the trial court failed to state a substantial and compelling reason for its departure, defendant's sentence is invalid and must be vacated. *Id.* at 448-449. Furthermore, at sentencing, the trial court stated: "Now, if they're going to send it back, and if they send it back, please send

it to someone else because I am not going to violate my common sense and give him any probation or go along with guidelines which have not been in anyway drafted with common sense.” This remark raises serious concerns about this judge’s ability to engage in a proper analysis on remand. See *People v Evans*, 221 Mich App 391, 398; 561 NW2d 862 (1997). Therefore, we acquiesce in the judge’s request that a different judge impose sentence on remand.

We vacate defendant’s sentence and remand for resentencing before a different judge. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski