

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY JOSEPH SCHURTZ,

Defendant-Appellant.

UNPUBLISHED

June 5, 2008

Nos. 278056, 278057

Kent Circuit Court

LC Nos. 06-001160-FH

06-007127-FH

Before: Davis, P.J., and Murray and Beckering, JJ.

MEMORANDUM.

Defendant pleaded guilty to third-degree home invasion, MCL 750.110a(4), and was sentenced to a term of probation. While still serving that probation, defendant pleaded guilty to breaking and entering with intent to commit a felony or larceny, MCL 750.110, and was sentenced to a term of imprisonment of 40 to 60 months. The latter offense constituted a violation of defendant's probation, and so probation was revoked, and defendant was sentenced to a term of imprisonment of 60 to 120 months. Both prison sentences constituted upward departures from the recommendations for the minimum sentences under the sentencing guidelines, which had called for intermediate sanctions instead of imprisonment. The trial court denied a motion for resentencing, which defendant brought upon the release of this Court's opinion in *People v Uphaus*, 275 Mich App 158; 737 NW2d 519 (2007), rev'd in part 480 Mich 939 (2007). Defendant now appeals on delayed leave granted. We affirm.

In *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), the United States Supreme Court held that "every defendant has the *right* to insist that the prosecutor prove to a jury all facts legally essential to the punishment." *Id.* at 313 (emphasis in the original). Our Supreme Court has held that *Blakely* is inapplicable to our system of indeterminate sentencing. *People v Drohan*, 475 Mich 140, 161, 164; 715 NW2d 778 (2006).

However, this Court later held that, where a guidelines departure caused a sentence to change from an intermediate sanction to a term of imprisonment, *Blakely* and related caselaw prohibited "judicial findings to justify an upward departure." *Uphaus, supra*, 275 Mich App at 171.

Our Supreme Court in turn declared that "an intermediate sanction is not a maximum sentence that is governed by *Blakely*," and expressly disapproved of this Court's treatment of

that issue in *Uphaus*. *People v Harper*, 479 Mich 599, 603 and n 1; 739 NW2d 523 (2007). The Court then reversed this Court's decision in *Uphaus*, and remanded the case for consideration of issues that were no longer moot. *Uphaus, supra*, 480 Mich 939.

Defendant's sole argument on appeal is that he should get the benefit of this Court's decision in *Uphaus*. Defendant duly reports that our Supreme Court has abrogated the rule of law of which he wants the benefit, but urges this Court to apply its reversed decision in that case, on the grounds that this Court decided the matter correctly, and that our Supreme Court's decision to the contrary is in violation of rights guaranteed by the United States Constitution.

However, decisions of our Supreme Court bind all lower courts in this state, including this one. See *Boyd v WG Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993), overruled on other grounds *Karaczewski v Farbman, Stein & Co*, 478 Mich 28; 732 NW2d 56 (2007). We are not at liberty to depart from our Supreme Court's jurisprudence by way of ignoring its ruling on *Uphaus* and resurrecting this Court's now-invalidated opinion in the matter.

Affirmed.

/s/ Alton T. Davis
/s/ Christopher M. Murray
/s/ Jane M. Beckering