

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VASEL DJONAJ,

Defendant-Appellant.

UNPUBLISHED

August 5, 2010

No. 292222

Oakland Circuit Court

LC No. 2007-212531-FH

Before: SAWYER, P.J., and BANDSTRA and WHITBECK, JJ.

PER CURIAM.

Following remand, defendant appeals as of right the sentence imposed following his jury trial conviction of aggravated stalking, MCL 750.411i. We dismiss this appeal as moot. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On April 3, 2009, defendant was resentenced to 18 months to five years in prison, which constituted an upward departure from the recommended sentencing range. A sentencing court may depart from the guidelines only for reasons that are objective and verifiable. See MCL 769.34(3); *People v Babcock*, 469 Mich 247, 257-258, 272; 666 NW2d 231 (2003). Here, the trial court found that a departure was warranted because defendant had demonstrated an inability to comply with the requirements of the criminal justice system, which was not adequately accounted for by the scoring. This was evidenced by defendant's being on district court probation and having two other pending cases for failure to appear at court dates at the time of the instant offense. The trial court also noted defendant's continued pattern of stalking behavior, which lasted for years despite repeated requests by the victim to stop and prior involvement of the criminal justice system, and found that, while "the sentencing guidelines touch upon various aspects of this overall predatory conduct, it failed to appropriately account for this reprehensible behavior and failed to give the totality of circumstances adequate weight." In addition, the trial court relied on the extreme distress suffered by the victim, and found that the guideline score for this factor was inadequate under the circumstances. Finally, the trial court also relied on defendant's two major misconduct tickets while incarcerated as supporting an upward departure.

Defendant challenges these factors as already accounted for in the guidelines; he maintains that the trial court erred by relying on them to depart from the guidelines recommendation of five years' probation and time served. However, defendant has already served the minimum sentence he challenges and has earned parole. Because we cannot fashion a

remedy, we dismiss this appeal as moot. See *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).¹

The appeal is dismissed as moot.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

¹ Notwithstanding the concerns our dissenting colleague has, generally, with the Offender Tracking Information System, we note that here the parties do not dispute the fact that defendant has served his minimum term, the only aspect of his sentence he contests on appeal. Further, we note that, even if this appeal were not moot, we would affirm on the merits for the reasons discussed by the dissent.