

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UNPUBLISHED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.

WHITBECK, J. (*dissenting*).

The majority dismisses this case as moot on the ground that defendant Vasel Djonaj has already served the minimum sentence he challenges and has earned parole. I disagree that dismissal on the basis of mootness is appropriate. Instead, I would conclude that the trial court did not abuse its discretion in departing from the sentencing guidelines, and I would affirm.

This Court's review is generally limited to the trial court record, and it will generally not allow an enlargement of the record on appeal.¹ Here, the record does not disclose Djonaj's current status within the corrections system. Rather, the information regarding his parole status was taken from the Michigan Department of Corrections Offender Tracking Information System (OTIS) website.² The parties did not request that this Court take judicial notice of this information, and, regardless, even assuming it had been made, I would decline such a request. MRE 201(b) states, in pertinent part, that this Court may take judicial notice of a fact that is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." However, the OTIS website contains the following disclaimer:

The Department of Corrections and the State of Michigan offer this information without any express or implied warranty as to its accuracy. The information on the database may not accurately reflect the most current location, status, projected release date or other information regarding an offender. Although every effort is

¹ MCR 7.210(A)(1); *People v Shively*, 230 Mich App 626, 628 n 1; 584 NW2d 740 (1998).

² Michigan Department of Corrections Offender Tracking Information System (OTIS) <<http://www.michigan.gov/corrections/0,1607,7-119-1409---,00.html>> (accessed July 15, 2010).

made to maintain accurate records on this database, no action should be taken as a result of information found herein without confirmation with the MDOC, the Michigan State Police through the use of their Internet Criminal History Access Tool (ICHAT) or a review of the court file.^[3]

On the basis of this disclaimer, I conclude that the OTIS website is not a source whose accuracy cannot reasonably be questioned. Accordingly, I would decline to take judicial notice of the website.⁴

Moreover, even assuming that the OTIS information were a reliable source, I note that while the website indicates that Djonaj earned parole on July 2, 2009, it also indicates that he remains under supervision until January 6, 2011.⁵ As JUSTICE KELLY explained in a footnote in her dissent to *People v Harper*,⁶ parole does not render moot the discussion of a defendant's sentence when that defendant remains under supervision. According to JUSTICE KELLY, until the defendant is discharged from supervision, "he faces the potential of parole revocation and could be returned to prison for the remainder of his . . . maximum sentence."⁷

Turning to the merits of Djonaj's claims, as stated, I conclude that the trial court did not abuse its discretion in departing from the sentencing guidelines. Djonaj argues that the trial court erred in relying on factors that were already taken into account in the guidelines scoring.⁸ However, a trial court may rely on those factors to depart from the recommended sentence to the extent that those factors were given inadequate or disproportionate weight.⁹ As the majority explains, the trial court here found that a departure was warranted because Djonaj's demonstrated inability to comply with the requirements of the criminal justice system, his continued pattern of stalking behavior, and the extreme distress suffered by the victim were all factors not adequately accounted for by the scoring.

I would affirm.

/s/ William C. Whitbeck

³ OTIS Disclaimer <<http://www.state.mi.us/mdoc/asp/otis2.html>> (accessed July 15, 2010).

⁴ See *People v Duncil*, unpublished opinion per curiam of the Court of Appeals, issued March 13, 2008 (Docket No. 273116).

⁵

Djonaj's	Offender	Status	Information	Page
< http://www.state.mi.us/mdoc/asp/otis2profile.asp?mdocNumber=655253 > (accessed July 15, 2010).				

⁶ *People v Harper*, 479 Mich 599, 650 n 5; 739 NW2d 523 (2007) (KELLY, J., *dissenting*).

⁷ *Id.*

⁸ MCL 769.34(3)(b); *People v Babcock*, 469 Mich 247, 267-268, 272; 666 NW2d 231 (2003).

⁹ MCL 769.34(3)(b); *Babcock*, 469 Mich at 267-268, 272.