

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

STATE OF FLORIDA,
Appellant,

v.

WILSON LAZIER, JR.,
Appellee.

No. 4D09-4695

[January 19, 2011]

HAZOURI, J.

The State of Florida appeals from a downward departure sentence imposed upon Wilson Lazier. We reverse and remand and direct the trial court to sentence Lazier within the sentencing guidelines.

Lazier was charged by information with the purchase of cocaine and resisting an officer without violence. Initially Lazier pled not guilty, but pursuant to a negotiated plea, he entered a guilty plea to the purchase of cocaine. The resisting charge was dismissed. Lazier was sentenced to eighteen months probation. The guidelines scoresheet for Lazier showed he scored 34.2 months as the lowest permissible sentence with a fifteen year maximum sentence.

An Affidavit of Violation of Probation was filed against Lazier charging him with failing to report; failing to remain at liberty without violating the law by operating a motor vehicle with an expired registration of more than six months; driving a vehicle with an unassigned tag; and failing to live and remain at liberty without violating the law by committing a simple battery.

A hearing on the violation of probation was held and the trial court found Lazier to have violated his probation and downwardly departed from the guidelines in sentencing him to six months in the Palm Beach County Jail. The State objected and asked for a written order stating the reasons why the court downwardly departed. The trial court failed to enter an order with written reasons for the downward departure.

In determining to downwardly depart, the court orally stated:

Because of the nature of the violation I am going to downwardly depart from the Guidelines. I don't think he's a probation candidate. I don't think that's going to do him any good; but I am going to downwardly depart from the Guidelines and sentence him to six months in the Palm Beach County Jail.

The State argues that the trial court failed to submit a written basis for departure and that its oral basis for departure was not a valid reason for departure under section 921.0026(2), Florida Statutes (2009). Lazier concedes that the State is correct in its assertion and that the decision should be reversed. However, Lazier argues that because his attorney indicated three possible bases for a downward departure sentence at sidebar and the trial court indicated an intention to depart downward, this court should remand for a re-sentencing hearing at which the trial court should be permitted to depart if it finds a legally sufficient reason to do so. We disagree.

“[W]hen an appellate court reverses a departure sentence because there were no written reasons, the court must remand for resentencing with no possibility of departure from the guidelines.” *See Pope v. State*, 561 So. 2d 554, 556 (Fla. 1990); *see also State v. Dunn*, 9 So. 3d 666 (Fla. 1st DCA 2009). Because the trial court in the instant case failed to provide written reasons for its departure and the oral basis for departure was not a valid reason, we reverse and remand for the trial court to resentence Lazier within the appropriate sentencing guidelines.

Reversed and Remanded With Directions.

DAMOORGIAN and GERBER, JJ., concur.

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Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Amy L. Smith, Judge; L.T. Case No. 2008CF010888AXX.

Pamela Jo Bondi, Attorney General, Tallahassee, and Heidi L. Bettendorf, Assistant Attorney General, West Palm Beach, for appellant.

Carey Haughwout, Public Defender, and Anthony Calvello, Assistant Public Defender, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.