

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LISA MARIE HAVENS,

Defendant-Appellant.

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FOR PUBLICATION

August 30, 2005

9:05 a.m.

No. 252699

Macomb Circuit Court

LC No. 2002-000375-FH

Official Reported Version

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

O'CONNELL, P.J. (*concurring*).

I concur with the lead opinion, but write separately to address the dissent.

The dissent relies on an excerpt from the sentencing court's cryptic justification for imposing a 15-year sentence when the sentencing guidelines dictated a minimum sentence range of 19 to 38 months. Examined closely, this excerpt does not contain any articulation of an objectively verifiable, substantial and compelling reason for the departure. Rather, the court merely states, *ipse dixit*, that "the guidelines are totally inadequate [sic], because defendant was dangerous and a serious threat to the community[,] . . . [e]specially . . . minors . . . ." The sentencing court's classification of defendant as "dangerous" and a "serious threat" is not an objective finding of any factual event, but a statement of personal opinion. Even though I share this opinion, this "finding" does not satisfy the requirement that a court must base its sentencing departure on objectively verifiable reasons and articulate them on the record. *People v Babcock*, 469 Mich 247, 257-259; 666 NW2d 231 (2003). Furthermore, the guidelines accounted for defendant's relative age and influential role in the criminal activity. At best, the sentencing court only suggests that it would find that "showing this minor how to use this drug" justifies a departure. While I do not disagree, I have no way of knowing how much of the court's departure was based on this offhandedly mentioned isolated reason, and how much of it was based on the several other reasons we find invalid. We do not reverse defendant's convictions or decry her sentences as unjust; we are merely sending the case back to give the sentencing court an opportunity to provide the missing, but necessary, statement of objective and verifiable, substantial and compelling reasons for departure.

I note that the prosecution, in its appellate brief, has stated substantial and compelling reasons justifying the departure, but the sentencing court has not. *Babcock* and MCL 769.34(3) construct an impenetrable legal wall around sentence departures that requires sentencing courts to pass through an alloy gate of plain language and strict scrutiny. A court may only unlock this

gate with a key made of objective and verifiable metal forged in the fire of substantial and compelling reasons and carefully crafted in an articulate statement on the record. The sentencing court in this case relied solely on fiery emotion and the power of innate human sentiment, without focusing any of that energy into a legally cognizable, factually based justification for departing. Because the law requires more, I join the lead opinion.

/s/ Peter D. O'Connell