

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD L. GREGORY,

Defendant-Appellant.

UNPUBLISHED

June 16, 1998

No. 199633

Recorder's Court

LC No. 94-006762

Before: Wahls, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Defendant pleaded guilty to manslaughter, MCL 750.321; MSA 28.553, and was sentenced to ten to fifteen years' imprisonment. We remanded this case "with directions to the trial court to articulate both on the record and on the SIR departure form those factors which it believed were not adequately considered by the guidelines so as to justify the extent of the departure from the recommended sentencing range." *People v Ronald Gregory*, unpublished memorandum opinion of the Court of Appeals, decided December 8, 1995 (Docket No. 180403). Following the articulation on the record of its reasons for departure, the court entered an order indicating that it was "resentencing" defendant to ten to fifteen years' imprisonment. Defendant appeals as of right. We affirm, but remand for the administrative task of the preparation of a SIR departure form.

Our review of the record discloses no hearing on remand at which the trial court resentenced defendant. We are also unable to find in the record any new or amended judgment of sentence that would establish that defendant had been resentenced on remand. Instead, the record indicates that the court conducted a hearing at which it merely articulated its reasons for imposing a sentence. Under these circumstances, we conclude that the court's reference to "resentencing" in the order entered on remand constitutes a misstatement of what occurred on remand. Because the remand proceedings did not constitute a critical stage in the proceedings and because defendant was not resentenced, defendant had no right to be present or to allocution at the remand proceedings. *People v Strunk*, 172 Mich App 208, 211; 431 NW2d 223 (1988).

Defendant's sentence does not violate the principle of proportionality, particularly where the brutal and disfiguring nature of the beating sustained by the victim was not adequately reflected in the sentencing guidelines range. *People v Houston*, 448 Mich 312; 532 NW2d 508 (1995).

Defendant's claim that the trial court failed on remand to follow our articulation instructions lacks record support. The trial court did fail, however, to record the reasons for the departure on an SIR departure form. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). Accordingly, we remand for the purely administrative task of preparing an SIR departure form. See *People v Yeoman*, 218 Mich App 406; 554 NW2d 577 (1996).

Defendant's claim of ineffective assistance of appellate counsel fails for lack of record support. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994).

Remanded for the completion of an SIR departure form. We do not retain jurisdiction.

/s/ Myron H. Wahls

/s/ Kathleen Jansen

/s/ Hilda R. Gage