

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD JAMES KNUDSEN,

Defendant-Appellant.

UNPUBLISHED

July 14, 1998

No. 201321

Benzie Circuit Court

LC No. 92-001343 FH

Before: Murphy, P.J., and Young, Jr. and Michael R. Smith*, JJ.

MEMORANDUM.

Following a plea-based conviction for operating a motor vehicle while under the influence of intoxicating liquor, third offense, MCL 257.625(7)(d); MSA 9.2325(7)(d), the trial court sentenced defendant to five years' probation, with the first year to be served in the county jail. Defendant subsequently pleaded guilty to violating the terms of his probation. He was sentenced to three to five years' imprisonment. Defendant appeals as of right. We affirm, but remand for the purely administrative function of correcting an error in the amended judgment of sentence.

Defendant's probation violation was predicated on a misdemeanor conviction for operating a motor vehicle with a suspended license, second offense, which was secured while defendant served his probationary sentence originally imposed in this case. To the extent that defendant's claim that he had not been imbibing alcoholic beverages immediately before his arrest on the aforementioned misdemeanor charge can be construed as a challenge to the accuracy of information contained in the presentence investigation report [PSIR], the trial court adequately responded to the challenge as demonstrated by the court's rejection of the challenge in light of the contents of the police report prepared in the underlying misdemeanor action, which indicated that, immediately before defendant's arrest, law enforcement authorities observed defendant drive through a stop sign and drive his vehicle off the road, almost causing the vehicle to overturn, which indicated that defendant smelled of alcohol and had bloodshot eyes at the time of arrest and which indicated that breathalyzer tests administered after defendant's arrest revealed a blood-alcohol level of .07 and .06. MCR 6.425(D)(3); *People v Hoyt*, 185 Mich App 531, 533-536; 462 NW2d 793 (1990).

* Circuit judge, sitting on the Court of Appeals by assignment.

The trial court adhered to the principle that sentences are to be tailored to the particular circumstances of the offense and offender where the court imposed the sentence it did in reliance on defendant's criminal history, his actions while on probation, and his failure to admit that he had been imbibing alcohol while on probation. *People v McFarlin*, 389 Mich 557, 574; 208 NW2d 504 (1973). These circumstances establish that the trial court did not abuse its sentencing discretion and impose a sentence disproportionate to the circumstances of the offense and offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The trial court did not abuse its sentencing discretion by failing to follow the sentence recommendation contained in the PSIR. *People v Cater*, 63 Mich App 41, 42-43; 233 NW2d 882 (1975).

The sentencing transcript and the original judgment of sentence reflect that the trial court imposed a sentence of three to five years' imprisonment. Subsequently, the trial court entered an amended judgment of sentence to correct an erroneous statutory citation. This amended judgment of sentence erroneously reflects that defendant was sentenced to a two-year minimum sentence. Accordingly, we remand to the trial court for the entry of an amended judgment of sentence that reflects the correct length of defendant's minimum sentence.

Defendant's conviction and sentence are affirmed. We remand for the administrative purpose of correcting the judgment of sentence. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Robert P. Young, Jr.
/s/ Michael R. Smith