

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY JAMES SAWYER,

Defendant-Appellant.

UNPUBLISHED
February 26, 2002

No. 227150
Oakland Circuit Court
LC No. 99-167018-FH

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence of thirty to sixty months' imprisonment for operating a motor vehicle under the influence of liquor, third conviction [OUIL3], MCL 257.625. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that his sentence is invalid because the circuit court failed to state adequate "substantial and compelling reasons" to exceed the guidelines' recommended sentence range under MCL 769.34(3) and because the circuit court failed to adequately inform defendant of his appellate rights according to MCL 769.34(7). We disagree.

While the sentencing guidelines assigned points for defendant's prior record, they did not take into account defendant's history of recidivism with regard to drunk driving. Defendant's record showed that he repeated the same illegal behavior over a twenty-year period despite numerous attempts to cure, punish, or otherwise rehabilitate him. Defendant's prior record was objective and verifiable, and the nature of his prior convictions showed a definite pattern which "keenly" or "irresistibly" calls attention to itself. Defendant's continued inability or refusal to stop driving while drunk constitutes substantial and compelling reasons to exceed the guidelines' range. *People v Babcock*, 244 Mich App 64, 75-76; 624 NW2d 479 (2000).

While the circuit court never specifically told defendant that he could appeal his sentence "on grounds that it is longer or more severe than the appropriate sentence range," the court did inform defendant "orally and in writing" that he could appeal his sentence. Nothing in MCL 769.34 suggests that this omission would render the sentence invalid or require resentencing. Any error is harmless in light of the fact that defendant is appealing his sentence on the grounds

that the circuit court exceeded the guidelines' range.

Affirmed.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Donald S. Owens