

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBIE LANELL GEORGE,

Defendant-Appellant.

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UNPUBLISHED  
February 26, 2002

No. 227353  
Wayne Circuit Court  
LC No. 94-012633

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

MEMORANDUM.

Defendant appeals as of right his resentencing for second-degree murder, MCL 750.317, armed robbery, MCL 750.529, four counts of assault with intent to rob while armed, MCL 750.89, and felony-firearm, MCL 750.227b. We remand for further findings by the trial court. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Following defendant's first appeal, this Court affirmed his convictions, but remanded the case for resentencing before a different judge on the ground that the sentencing judge had improperly relied on her belief that defendant had committed first-degree murder, a charge of which he was acquitted by the jury. *People v Prince*, unpublished opinion per curiam of the Court of Appeals, issued February 28, 1997 (Docket Nos. 186979 and 186988). Following his second appeal, this Court again remanded for resentencing before a different judge on the ground that the second judge failed to familiarize himself with the facts of the case prior to resentencing. *People v George*, unpublished opinion per curiam of the Court of Appeals, issued January 28, 2000 (Docket No. 214103). The resentencing court was specifically directed to articulate the reasons for departure if the sentence exceeded the guidelines range.

At the second resentencing, the trial court opined that the forty to sixty year' sentences did not exceed the guidelines range of 144 to 300 months or life. However, even though the guidelines provide for a life sentence, a term-of-years sentence whose minimum exceeds the specific month limitation is considered to be outside the guidelines. *People v Johnson*, 202 Mich App 281, 291; 508 NW2d 509 (1993). Thus, defendant's sentences did, in fact, exceed the pertinent guidelines range.

When a trial court departs from the judicial sentencing guidelines, it is required to articulate the reasons for the departure. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). Where, as here, the trial court believed that the sentence was within the guidelines, it

had no grounds to articulate the reason for a departure. Accordingly, a remand is necessary to allow the court to make the required articulation.<sup>1</sup> *People v Johnson*, 187 Mich App 621, 631-632; 468 NW2d 307 (1991).

Remanded for articulation of reasons for the sentences imposed. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Martin D. Doctoroff

/s/ Donald S. Owens

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<sup>1</sup> Because we are remanding for articulation, rather than resentencing, defendant's request for resentencing by a different judge is premature.