

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IAN G. CALABRESE,

Defendant-Appellant.

UNPUBLISHED

June 17, 2004

No. 246795

Wayne Circuit Court

LC No. 02-007658

Before: Sawyer, P.J., and Gage and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from a conviction of driving on a suspended license causing death (DWLS-D), MCL 257.904(4), for which he was sentenced to five to fifteen years in prison.¹ We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the trial court erred in utilizing the statutory sentencing guidelines for DWLS-D because they were not in effect at the time he committed the offense and should have utilized instead the guidelines applicable to negligent homicide. Because defendant has not briefed the issue nor cited any applicable authority supporting his contention, the issue is deemed abandoned. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000); *People v Kent*, 194 Mich App 206, 210; 486 NW2d 110 (1992). Addressing the issue nonetheless, we find no basis for resentencing.

We agree that the trial court erred in utilizing the statutory guidelines for DWLS-D. The court is generally required to impose a sentence "within the appropriate sentence range *under the version of those sentencing guidelines in effect on the date the crime was committed.*" MCL 769.34(2) (emphasis added). Defendant committed the offense in June 2000 and the guidelines did not become applicable to the offense until October 1, 2000. MCL 777.12.

Simply because the guidelines did not apply to DWLS-D does not mean that the court was required to utilize the guidelines applicable to negligent homicide. Using the guidelines

¹ Defendant was also convicted of negligent homicide, MCL 750.324, for which he was sentenced to one to two years in prison. That conviction and sentence are not at issue here.

applicable to a different offense would have been improper. *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998). Because the guidelines were not applicable to the offense at all, the court was entitled to impose any sentence within the limits set by the Legislature that was proportionate to the circumstances surrounding the offender and the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990) (adopting standard of proportionality); *People v Tanner*, 387 Mich 683, 690; 199 NW2d 202 (1972) (minimum sentence cannot exceed two-thirds of maximum); *People v Shipley*, 256 Mich App 367, 378; 662 NW2d 856 (2003) (a sentence is invalid if it exceeds the statutory limits). Defendant does not contend that his sentence for DWLS-D was legally invalid or disproportionate without reference to the guidelines. Therefore, defendant has not shown a right to relief.

Affirmed.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens