STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 16, 2004
v	No. 250244 Schoolcraft Circuit Court
JONATHAN MICHAEL BARTOY, Defendant-Appellant.	LC No. 03-006344-AR

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted a circuit court order that affirmed the district court's (1) refusal to grant defendant youthful trainee status under the Holmes Youthful Trainee Act (HYTA), MCL 762.11 *et seq.*, on his conviction of minor in possession of alcohol (MIP), MCL 436.1703(1)(a), and (2) denial of sanctions with regard to the prosecution's opposition to a post-judgment order. We reverse the denial of youthful trainee status, but affirm the denial of sanctions. This appeal is being decided without oral argument under MCR 7.214(E).

Defendant first argues that the circuit court erred by affirming the district court's denial of his request for youthful trainee status. We agree.

A trial court's decision to grant or deny youthful trainee status is reviewed for an abuse of discretion. *People v Gow*, 203 Mich App 94, 96; 512 NW2d 34 (1993); *People v Teske*, 147 Mich App 105, 109; 383 NW2d 139 (1985). MCL 762.11 provides in relevant part:

> If an individual pleads guilty to a charge of a criminal offense, other than a felony for which the maximum punishment is life imprisonment, a major controlled substance offense, or a traffic offense, committed on or after the individual's seventeenth birthday but before his or her twenty-first birthday, the court of record having jurisdiction of the criminal offense may, without entering a judgment of conviction and with the consent of that individual, consider and assign that individual to the status of youthful trainee.

It is well established that the HYTA is a remedial statute and should be construed liberally. *Teske*, *supra* at 107; *People v Fitchett*, 96 Mich App 251, 253; 292 NW2d 191 (1980). "The statute also evidences a legislative desire that persons in this age group not be stigmatized with criminal records for unreflective and immature acts." *People v Perkins*, 107 Mich App 440, 444;

309 NW2d 634 (1981). The seriousness of the offense and the defendant's age should be equal considerations when the competing factors are weighed by the trial court in exercising its discretion. *Fitchett*, *supra* at 253.

In this case, the district court agreed that the offense was very minor and in fact expressed its disagreement with the Legislature's criminalization of MIP. Despite this, the court concluded that "the only way to fight underage drinking is to treat people in a consistent manner . . . ." The district court noted that "[q]uite often the minor in possession tickets that we see are people in your position and maybe the [L]egislature should take a look at that."

Individualized sentencing for each defendant is the policy of this state. *People v Sabin (On Second Remand)*, 242 Mich App 656, 661; 620 NW2d 19 (2000). "A sentence is invalid . . . when it conforms to local sentencing policy rather than individualized facts." *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). In this case, we construe the district court's comments in denying the request as suggesting a sentencing policy to never grant youthful trainee status to individuals who are charged with MIP, regardless of their backgrounds. Even the circuit court acknowledged that the district court's reasons consisted only of the need for equality of treatment and the epidemic of underage drinking, and the prosecutor states that he does not recall ever having seen a defendant charged with MIP be granted youthful trainee status.

In this case, defendant's attorney stated at the plea proceedings that defendant was an outstanding athlete and had also been the recipient of several academic awards. These assertions are not disputed. The district court did not take these facts into consideration, nor did it consider defendant's age. As for the seriousness of the offense, the court itself thought it to be a minor criminal offense. Thus, the court's decision was an abuse of discretion because it was made on the basis of a sentencing policy and not in consideration of the relevant factors.

To the extent the court did so, it was also an abuse of discretion for the court to base its decision on the fact that defendant's cohorts pleaded guilty without requesting youthful trainee status. Defense counsel indicated at the hearing that defendant is concerned about a criminal record because he plans to pursue a career in the public sector after he graduates from college. The codefendants may not have had such concerns and may have preferred to pay the small fine and be done with the matter as opposed to submitting to probation and the requirements of probationary status. See MCL 762.13.

The prosecutor argues that the request for youthful trainee status was not properly before the court because no written petition was filed and no hearing was held. However, MCL 762.11 does not require the filing of a written petition, nor does it mandate a separate hearing. Plaintiff has also failed to cite any court rule or other authority expressly requiring a written petition and formal hearing.

Because the district court did not cite a proper legal basis to deny youthful trainee status, we reverse its decision and remand for resentencing. On remand, the district court is directed to make a decision, in regard to whether defendant should or should not be placed on youthful trainee status, predicated not on invalid sentencing criteria as cited above, but rather on individualized factors, the statutory language of the HYTA, and the case law interpreting the act. The court shall consider this young man's personal background in reaching a decision. On the

rather limited record before us, there is nothing that strikes us as precluding defendant from being assigned youthful trainee status.

Defendant also argues that the circuit court erred in affirming the district court's denial of his request for sanctions under MCR 2.114 with regard to the prosecution's refusal to stipulate to entry of a post-judgment order expressly reflecting the district court's denial of the request for youthful trainee status. We disagree.

The district court did not clearly articulate its reasons for denying defendant's request for sanctions. Regardless, defendant's argument is based on the position that it was necessary for the district court to enter a "corrective" order providing that the request for youthful trainee status was denied. However, there was simply no need for such an order. Under the plain language of MCL 762.11 and MCL 762.14, a judgment of conviction is not entered when a defendant is assigned to youthful trainee status. Thus, the district court's entry of the judgment of sentence necessarily reflected its decision to *not* place defendant on youthful trainee status. There was no dispute that a request for youthful trainee status was made, and there was simply no need for defendant to seek a separate order expressly indicating a denial of the request. Accordingly, and assuming MCR 2.114 is even applicable under the circumstances, the prosecution did not act improperly by opposing such an unnecessary order, and the trial court did not err by denying sanctions with regard to this matter.

We reverse the district court's denial of defendant's request for youthful trainee status, as well as the circuit court's ruling, vacate the judgment of sentence, and remand for proceedings consistent with this opinion, but affirm the denial of defendant's request for sanctions. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly