

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LESLEY SUE STANLEY,

Defendant-Appellant.

UNPUBLISHED

November 14, 2006

No. 260312

Oakland Circuit Court

LC No. 2002-187744-FH

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant was convicted of aggravated stalking, MCL 750.411i, and sentenced to probation for five years. In a prior appeal, this Court affirmed the conviction in *People v Stanley*, unpublished order of the Court of Appeals, entered February 21, 2006 (Docket No. 261970). Defendant violated her probation and was subsequently sentenced to a prison term of 18 months to five years. She appeals as of right. We affirm.

Defendant was convicted of aggravated stalking after she sent several letters to the complainant, an acquaintance from school and a Pontiac police officer. In the letters, defendant expressed her desire for a relationship, to have the complainant's children, and her plans for their life together. The letters suggested that she was observing him. As conditions of her probation, the trial court ordered defendant to participate in mental health treatment as directed by the probation department, seek or maintain employment, and not have any contact with the complainant. Defendant violated her probation by continuing to contact the complainant, showing up unannounced at his house.

At sentencing, the court explained that it was departing from the sentencing guidelines range of zero to three months because "the defendant has continued to have contact with the same victim and has in fact a new charge for aggravated stalking with this victim. She failed to receive mental health treatment, failed to maintain employment, failed to go to school, and has had . . . new criminal behavior while on probation." The departure evaluation form states:

Defendant has failed to receive treatment, maintain or seek employment and had continued contact with victim. In addition, Defendant is continuing to have delusions and is involved in new criminal activity.

On appeal, defendant argues that the trial court abused its discretion by departing from the sentencing guidelines range without articulating substantial and compelling reasons for the departure.

The sentencing guidelines apply to sentences imposed after a probation violation. *People v Hendrick*, 472 Mich 555, 557; 697 NW2d 511 (2005). But a court may consider acts that give rise to the violation and other “postprobation factors” to determine whether there are substantial and compelling reasons for a departure. *Id.*, pp 557, 562-563.

Because the upper end of the guidelines range was 18 months or less, the court was required to impose an intermediate sanction, which does not include a prison sentence, unless the court stated on the record a substantial and compelling reason to sentence defendant to the jurisdiction of the Department of Corrections. MCL 769.34(4)(a); MCL 769.31(b); *People v Stauffer*, 465 Mich 633, 635; 640 NW2d 869 (2002).

A “substantial and compelling” reason is an objective and verifiable reason that “keenly” or “irresistibly” grabs a court’s attention and is “of considerable worth” in deciding the length of the sentence. *People v Babcock*, 469 Mich 247, 257; 666 NW2d 231 (2003) (internal citation and quotation marks omitted).

The factors identified by the trial court relate to defendant’s violation of the conditions of her probation. “[A]ny probation violation represents an affront to the court and an indication of an offender’s callous attitude toward correction and toward the trust the court has granted the probationer.” *People v Schaafsma*, 267 Mich App 184, 186; 704 NW2d 115 (2005). Because defendant’s contact with the complainant involved a flagrant violation of the conditions of her probation, the trial court did not abuse its discretion in finding substantial and compelling reasons a departure from the guidelines.

Defendant argues that even if a departure was warranted, the extent of the departure, i.e., a prison sentence rather than a jail term, was not.

In assessing whether the trial court abused its discretion, this Court must accord some degree of deference to the trial court because of its knowledge of the facts and direct familiarity with the circumstances of the offender. *Babcock, supra*, p 270. In circumstances where there is more than one reasonable and principled outcome and the trial court selects one of them, there is no abuse of discretion. *Id.*, p 269. An abuse of discretion occurs “when the trial court chooses an outcome outside this principled range of outcomes.” *Id.*

Here, the trial court’s determination that a prison sentence was warranted was not outside the principled range of outcomes in light of defendant’s conduct while on probation.

Defendant notes that the statement in the Departure Evaluation that “Defendant is continuing to have delusions” is a conclusion that is not objective and verifiable. To be objective and verifiable, the factors must be “actions or occurrences that are external to the minds of the judge, defendant, and others involved in making the decision, and must be capable of being confirmed.” *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). In this context, “delusion” means “a false belief or opinion,” and “a false belief that is resistant to reason or confrontation with actual fact.” *Random House Webster’s College Dictionary* (1997).

Defendant's beliefs are not external to her mind, and therefore delusions are not objective and verifiable.

However, resentencing is not required because it is apparent that the trial court would have departed to the same degree without regard to defendant's "delusions." *Babcock, supra*, p 260. The insignificance of defendant's "delusions" to the court's decision is indicated by the fact that the court did not mention "delusions" on the record as a basis for departure; this factor was only mentioned on the departure evaluation form. It is apparent that the court was principally concerned with defendant's actual behavior, not her beliefs.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio