

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BEVERLY JANE PARSEL,

Defendant-Appellant.

UNPUBLISHED

November 21, 2006

No. 261849

Allegan Circuit Court

LC No. 04-013688-FH

Before: O’Connell, P.J., and White and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1), malicious destruction of fire or police property, MCL 750.337b, and domestic violence, MCL 750.81(2). Defendant appeals by right the prison sentences the trial court imposed. We affirm in part and remand for the limited purpose of amending the judgment of sentence.

Defendant first claims on appeal that, pursuant to *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), and *United States v Booker*, 543 US 220; 125 S Ct 738; 160 L Ed 2d 621 (2005), Michigan’s sentencing scheme violates her Sixth Amendment right to have a jury make factual findings. Our Supreme Court has definitively ruled to the contrary, holding that these cases do not affect Michigan’s sentencing scheme. *People v Drohan*, 475 Mich 140, 164; 715 NW2d 778 (2006); *People v Claypool*, 470 Mich 715, 730-731 n 14; 684 NW2d 278 (2004).

Defendant also requests on appeal that this Court remand the present case to the trial court with directions to amend the judgment of sentence to reflect a minimum sentence of 34 months’ imprisonment for her conviction of malicious destruction of fire or police property.

Generally, a trial court must impose a sentence that falls within the recommended minimum sentence range under the legislative guidelines. MCL 769.34(2); *People v Solmonson*, 261 Mich App 657, 668; 683 NW2d 761 (2004). A trial court may depart from the recommended sentence range only “if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure.” MCL 769.34(3). The parties agree

that the recommended sentence range under the legislative guidelines for defendant's conviction of malicious destruction of fire or police property was 10 to 34 months' imprisonment.¹ However, the trial court sentenced defendant to a minimum of 35 months' imprisonment, an upward departure from the recommended sentence range. The trial court did not articulate a substantial and compelling reason for the departure. And, in fact, when sentencing defendant, the trial court evidenced a clear intent to sentence within the guidelines. The court determined that there were no substantial and compelling reasons to justify a departure.

For these reasons, defendant is entitled to be resentenced. MCL 769.34(11); *People v Babcock*, 469 Mich 247, 266; 666 NW2d 231 (2003). The parties agree that the error that led the trial court to impose a minimum sentence of 35 months' imprisonment and not 34 months' imprisonment was a clerical error on the Sentencing Information Report. Because defendant only requests that this Court remand this case to allow the trial court to amend the judgment of sentence, we do remand with directions that the trial court amend the judgment of sentence to reflect a minimum sentence of 34 months' imprisonment for defendant's conviction of malicious destruction of fire or police property. See MCR 6.435(A).

We affirm but remand for the limited purpose of amending the judgment of sentence. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Jane E. Markey

¹ Both parties agree that the upper end of the guidelines recommended range is 34 months. The parties also agree that amending defendant's minimum sentence for this offense to 34 months is the appropriate remedy. We note, however, that when applying the 50% multiplier of MCL 777.21(3)(b) to the appropriate cell (PRV E and OV II) of the class F guidelines grid, MCL 777.67, the upper end of the recommended sentence range is actually 34.5 months. See *People v Hawthorne*, unpublished opinion per curiam of the Court of Appeals, issued September 27, 2005 (Docket No. 255722), slip op at 4 n 1, rev'd on other grounds 474 Mich 1108; 711 NW2d 741 (2006).