

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAYLA WELLINGTON,

Defendant-Appellant.

UNPUBLISHED

November 18, 2008

No. 281529

Wayne Circuit Court

LC No. 05-011786-02

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Defendant appeals by right the sentence of 12 to 20 years in prison imposed on her conviction of second-degree murder, MCL 750.317. For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Following a bench trial, defendant was convicted of second-degree murder on evidence that she aided and abetted her former boyfriend, Melvin Baker, in killing the victim, Reginald Tidmore. Baker testified against defendant in return for a favorable plea agreement. Defendant was initially sentenced to 16½ to 30 years in prison. This Court affirmed defendant's conviction, but remanded for clarifications of sentencing findings and for possible resentencing.¹

During resentencing, defense counsel indicated that defendant's new minimum sentence range was 144 to 240 months.² Following a discussion by defense counsel concerning defendant's exemplary conduct in prison and her motivation for rehabilitation, and a brief interchange with defendant, the trial court sentenced defendant at the low end of the guidelines, as counsel had specifically requested.

On appeal, defendant argues that she was denied her right to allocution when the trial court interrupted her at the resentencing hearing. Defendant failed to raise this issue below; consequently it has not been preserved for appeal. *People v Jones (On Rehearing)*, 201 Mich

¹ *People v Wellington*, unpublished per curiam opinion of the Court of Appeals, issued June 28, 2007 (Docket No. 269570).

² Defendant's initial minimum sentence range was 162 to 270 months.

App. 449, 452; 506 NW2d 542 (1993). Therefore, we review this issue for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). We must reverse only if the plain, forfeited error resulted in the conviction of an innocent defendant, or if an error seriously affected the fairness, integrity or public reputation of judicial proceedings. *Id.*

MCR 6.425(E)(1)(c) requires the court to allow a defendant and his counsel the opportunity to "advise the court of any circumstances they believe the court should consider in imposing sentence." See also *People v Lawson*, 172 Mich App 498, 500-501; 432 NW2d 354 (1988). The purpose of the right to allocution is to allow a defendant "to speak in mitigation of the sentence," to equalize the sentencing process, and to allow the defendant to begin an atonement or healing process. *People v Petty*, 469 Mich 108, 119, 121; 665 NW2d 443 (2003).

During resentencing, the following colloquy took place between the sentencing court and the defendant:

THE COURT. Okay. Okay. Anything you want to say on your behalf, ma'am?

DEFENDANT. Um, I want to say--

THE COURT. (Interposing) I read your letter.

DEFENDANT. Okay.

THE COURT. It's very nice.

DEFENDANT. That's--

THE COURT Okay. I think that she's learned something from this. I think that this was a very bad case. And the Court--you know, I am going to resentence her. I am going to take those things into consideration, the accomplishments that she's made. And the Court is going to resentence her.

We hold that defendant was not denied the right to allocution before her sentence was imposed. It is true that the trial court interrupted defendant's verbal comments during resentencing, but there is no indication in the transcript that defendant would have been denied the right to continue should she have expressed a wish to do so. In addition, the trial court clearly contemplated defendant's written statement, and found it favorable to the trial court's decision, which was to give defendant the lenient sentence her counsel had specifically requested. Finally, we also note that defendant had already expressed remorse to the victim's family during her initial allocution, and had certainly begun to atone for her actions while in prison. We are also mindful of the fact that this is the second occasion for the defendant to appear before the sentencing court. Under the circumstances, defendant has not shown that any error seriously affected the fairness, integrity, or public reputation of judicial proceedings. Accordingly, we affirm defendant's sentence.

Affirmed.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis