

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CURTIS OZA JACKSON,

Defendant-Appellant.

UNPUBLISHED

September 21, 2010

No. 292766

Berrien Circuit Court

LC No. 2008-400566-FH

Before: MURPHY, C.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the sentence of 32 to 48 months in prison imposed on his plea-based conviction of bribery of a public officer, MCL 750.117. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with bribery of a public officer after the police received a letter that defendant sent to Chief Judge Alfred M. Butzbaugh of the Berrien Circuit Court. In the letter defendant offered to pay \$1,000 if Chief Judge Butzbaugh would reopen a case defendant filed on behalf of his daughter seeking a personal protection order (PPO). Judge Mabel Mayfield had denied the request for a PPO. Defendant later admitted that he did not even have a daughter and that he had fabricated the information that served as the basis for the request for the PPO.

Defendant agreed to plead guilty to bribery of a public official in return for dismissal of a habitual offender charge. Defendant admitted that he offered to pay Chief Judge Butzbaugh \$1,000 to reopen the fabricated PPO case.

At sentencing, the parties agreed that the statutory sentencing guidelines recommended a minimum term range of 12 to 24 months. MCL 769.34(4)(c) provides that where the upper limit of the recommended minimum sentence exceeds 18 months and the lower limit is 12 months or less, the court, absent a departure, shall sentence the defendant to imprisonment with a minimum term within that range or to an intermediate sanction that may include a term of imprisonment of not more than 12 months. A representative of the Probation Department said that defendant admitted in his interview that he did not have a daughter and that he wrote the letter “to destruct the court system; it got him a chance to get out of prison and moved around a little bit.” Thereafter, the trial court made the following statement:

Well, the sentencing guidelines obviously do not consider this type of motive,¹] and I would note that he is a—classified as a level 5, which is a maximum security risk because of his Escape charges. I think this is clearly an effort on his part to get moved around to facilitate an opportunity to escape. And the sentencing guidelines do not give sufficient weight or consideration to any of that, and this Court’s sentence is—and I considered—and I also find a substantial compelling reason to depart, not only for those reasons, but the fact that the attempt was made to bribe, for whatever reason—which, apparently, doesn’t even exist—a sitting judge the Presiding Chief Judge of this court. That cuts to the very heart of our system of justice in this country. And if and when judges—and obviously that did not happen in this case, but if and when judges can be approached to influence other judges in their opinions, in—as in this case, the capacity of the Chief Judge, Presiding Judge of this court, to influence another judge, over which he does not have, by the way, any real influence because he can’t command that judge to do anything other than administratively, but, that cuts to the very core of our criminal justice system and would shake the foundations if such thing—of our respect for the criminal justice system, as well as any other aspect of the justice system, if the public perception of our court are—is that what, a \$1,000, \$500, \$500,000, you can buy justice, we might as well close up shop and start a new method of justice or injustice.

The trial court sentenced defendant to 32 to 48 months in prison, to be served consecutively to the sentence defendant was serving at the time he committed the instant offense.

Thereafter, defendant filed a number of motions, including ones to withdraw his plea and to correct his sentence. The trial court denied the motions. In commenting on defendant’s practice of filing numerous meritless motions and refusing to cooperate with counsel, the trial court described defendant as “a particularly perplexing individual, manipulative and incredible[,]” and as “a legal eagle.”

On appeal, defendant argues that the trial court abused its discretion by imposing a minimum sentence that exceeded the guidelines. Defendant argues that the trial court’s first stated reason for exceeding the guidelines, defendant’s motivation to disrupt the court system, is accounted for in Offense Variable (OV) 19, MCL 777.49, which pertains to interference with the administration of justice. According to defendant, the trial court’s second stated reason for exceeding the guidelines, that the incident represented an attempt by defendant to escape, is not objective or verifiable, notwithstanding the fact that defendant had a prior conviction for escape. Defendant next contends that the trial court’s third stated reason for exceeding the guidelines, that defendant attempted to bribe the chief judge, is adequately provided for by the four-year maximum term specified by the Legislature. In sum, defendant maintains that the trial court

¹ This was a reference to defendant’s motive to “destruct the court system.”

failed to cite substantial and compelling reasons for departing from the guidelines and failed to justify the extent of the departure.

Defendant asserts that this case should be remanded for resentencing before a different judge. He argues that the trial court's characterization of defendant as "manipulative and incredible" and a "legal eagle" indicates that the court cannot be expected to act objectively on remand.

As a general rule, a trial court must impose a sentence within the guidelines, unless a substantial and compelling reason exists to depart from the guidelines. MCL 769.34(3). To be substantial and compelling, a reason must be objective and verifiable, must irresistibly attract the attention of the court, and must be of considerable worth in deciding the length of the sentence. *People v Babcock*, 469 Mich 247, 272; 666 NW2d 231 (2003). To be objective and verifiable, the factors must be actions or occurrences that are external to the minds of the judge, the defendant, and others, and they must be capable of being confirmed. *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). The reason for the departure must be articulated by the trial court on the record. MCL 769.34(3). A substantial and compelling reason articulated by the trial court to merit a departure from the sentencing guidelines must justify the particular departure at issue. *Babcock*, 469 Mich at 272. The *Babcock* Court stated:

Because the trial court must articulate on the record a substantial and compelling reason to justify the particular departure, if the trial court articulates multiple reasons, and the Court of Appeals determines that some of these reasons are substantial and compelling and some are not, the panel must determine the trial court's intentions. That is, it must determine whether the trial court would have departed and would have departed to the same degree on the basis of the substantial and compelling reasons alone. If the Court of Appeals is unable to determine whether the trial court would have departed to the same degree on the basis of the substantial and compelling reasons, or determines that the trial court would not have departed to the same degree on the basis of the substantial and compelling reasons, the Court of Appeals must remand the case to the trial court for resentencing or rearticulation of its substantial and compelling reasons to justify its departure. For instance, if the trial court departs from the guidelines range by twelve months and articulates reasons A, B, and C to justify this departure, and if the Court of Appeals determines that reasons A and B are not substantial and compelling reasons, but that C is, the Court of Appeals must determine whether the trial court would have departed from the guidelines range by twelve months on the basis of reason C alone. [*Id.* at 260-261.]

In determining whether a sufficient basis exists to depart from the sentencing guidelines, the trial court must ascertain whether the departure would result in a sentence more proportionate to the seriousness of the offense and the defendant's criminal history than would adherence to the guidelines. *Id.* at 262-264.

We review the determination of the existence of a factor for departing from the guidelines for clear error, review the determination that a factor is objective and verifiable de novo, and review the determination that objective and verifiable factors constituted substantial and

compelling reasons meriting departure from the guidelines for an abuse of discretion. *Id.* at 273-274. A trial court may depart from the guidelines for nondiscriminatory reasons based on an offense or offender characteristic that was already considered in calculating the guidelines if the trial court concludes that the characteristic was given inadequate or disproportionate weight. *Id.* at 272, citing MCL 769.34(3)(b). An abuse of discretion exists when the sentence imposed is not within the range of principled outcomes. *Babcock*, 469 Mich at 269. In determining whether substantial and compelling reasons existed to merit departure from the sentencing guidelines, we must give appropriate deference to the trial court's sentencing determination. *Id.* at 270.

With respect to two of the departure factors offered by the trial court, that defendant sought to “deconstruct” the court system solely for the sake of doing so and that defendant sought to bribe the chief judge, we find that they are not adequately accounted for in the scoring of OV 19. That OV considers actions by a defendant such as giving a false name and telling witnesses not to disclose activities that would result in imprisonment as constituting interference with the administration of justice. See *People v Barbee*, 470 Mich 283, 288; 681 NW2d 348 (2004); *People v Steele*, 283 Mich App 472, 492-493; 769 NW2d 256 (2009). In this case, defendant admittedly fabricated a story and instituted a court proceeding simply to impose upon the judicial process. That the allegations in defendant's petition for a PPO were false was objective and verifiable as confirmed by the record. Moreover, defendant then sought to bribe the chief judge to interfere in the fabricated case, which was on the docket of another judge, and thereby disrupt the system to an even greater degree. This factor was also objective and verifiable as confirmed by the record. This was not a situation in which defendant interfered with the administration of justice in order to avoid capture or prosecution, which conduct has some basis in logic. Rather, defendant acted merely in spite, taking pleasure in disrupting the system. Single-handedly and vindictively, defendant was attempting to circumvent, manipulate, and disrupt the judicial process. These reasons for departure irresistibly grab the attention of the court, are of considerable worth, and reflect exceptional circumstances. Under these unusual circumstances, we conclude that the trial court did not err in finding that the guidelines failed to adequately account for defendant's conduct, and the court did not abuse its discretion in exceeding the guidelines for these reasons, nor did the extent of the departure constitute an abuse of discretion.

However, as acknowledged and conceded by the prosecution in its brief, the trial court's other stated reason for exceeding the guidelines, that defendant engaged in this conduct in order to facilitate an opportunity to escape, was not objective and verifiable given the existing record. Defendant acknowledged that he fabricated the PPO case in order to get moved around, but he never admitted that his motive was to accomplish an escape, nor was there any evidence definitively establishing such a conclusion; the trial court was necessarily speculating.²

² Considering defendant's prior escape history and his confinement in a maximum security facility, the court's conclusion, while not objective and verifiable on the existing record, was certainly not unreasonable.

As reflected above, the trial court cited both valid and invalid reasons for exceeding the guidelines. However, we find that a remand for resentencing or rearticulation is wholly unnecessary, as we are confident that the trial court would have departed from the guidelines and departed to the same extent had it relied on only the valid reasons for doing so. It is apparent to us that, from review of the record, the focus of the trial court's reasoning in support of departure was on defendant's efforts to manipulate, disrupt, and play games with the judicial system. We are comfortable with our ruling, especially given the court's following remarks made to defendant during a hearing on myriad, meritless motions filed by defendant pro per after sentencing:

But Mr. Jackson, you are a particularly perplexing individual, manipulative and incredible as far as this court is concerned. You make assertions that are absolutely, patently false. And the fact that you have refused to assist your court appointed counsel . . . by forwarding to him a copy of the alleged PSI[R] which you state is different and falsified and -- which falls into your pattern, by the way, of making false allegations about -- just about everything under the sun, hoping, like spaghetti, that it'll -- something will stick up against the wall. That's my assessment of your behavior.³

This passage reveals that defendant's manipulative and disruptive behavior is ongoing and likely to continue. Given our ruling, it is unnecessary to reach the issue of resentencing before a different judge.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Christopher M. Murray

³ When the trial court stated, after denying defendant's motions, that it assumed defendant would try to find something new to pursue, defendant responded, "I'll find something. Don't worry about it."