

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
January 23, 2018

v

AUSTIN SHELBY VALENTINE,  
Defendant-Appellant.

No. 336212  
Emmet Circuit Court  
LC No. 11-003479-FH

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Before: MARKEY, P.J., and SHAPIRO and GADOLA, JJ.

PER CURIAM.

Pursuant to a plea agreement, defendant pled guilty in May 2011 to attempted manufacturing of marijuana, MCL 333.7401(2)(d)(iii). Defendant failed to appear for his scheduled sentencing and remained at large for more than a year. In March 2013, the trial court sentenced defendant to two years' probation, with nine months to be served in jail. Defendant thereafter violated his probation by failing to report to his probation officer and again absconded for more than a year. In June 2016, after defendant pled guilty to violating his probation, the trial court sentenced defendant to a prison term of two to four years, with credit for 296 days served. Defendant now appeals by delayed leave granted,<sup>1</sup> arguing that his prison sentence is unreasonable and disproportionate. We affirm.

Defendant's sentence represents a departure from the sentencing guidelines range of 0 to 9 months. "[A] departure sentence may be imposed when the trial court determines that 'the recommended range under the guidelines is disproportionate, in either direction.'" *People v Steanhouse (On Remand)*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2017); slip op at 2-3. "An appellate court must evaluate whether reasons exist to depart from the sentencing guidelines and whether the *extent* of the departure can satisfy the principle of proportionality." *Id.* at 3.

"The first inquiry in our reasonableness review is whether there were 'circumstances that are not adequately embodied within the variables used to score the guidelines.'" *Id.* citing *People v Milbourn*, 435 Mich 630, 659-600; 461 NW2d 1 (1990). In this case, there clearly

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<sup>1</sup> *People v Valentine*, unpublished order of the Court of Appeals, entered January 25, 2017 (Docket No. 336212).

were. Defendant absconded on two occasions and demonstrated a clear willingness to disregard his legal responsibilities. As the sentencing judge observed, “the original scoring did not take into account [defendant’s] post-sentencing behavior of failing to obey the conditions of probation.” And although the guidelines apply where a sentence is imposed after revocation of probation, facts giving rise to probation violation may provide a basis for departure from the guidelines. *People v Hendrick*, 472 Mich 555, 557, 560; 697 NW2d 511 (2005).

Because of defendant’s repeated history of disrespect for the legal system, and his demonstrated inability to comply with probation even after a jail sentence, the trial court did not abuse its discretion in determining that a prison sentence was justified nor in the extent of the departure which was 15 months.<sup>2</sup> Accordingly, we affirm.

/s/ Jane E. Markey  
/s/ Douglas B. Shapiro  
/s/ Michael F. Gadola

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<sup>2</sup> In any event, as defendant has already served his minimum sentence and been paroled, any challenge to the extent of the trial court’s departure sentence is moot. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).