

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 6, 2012

v

SEAN CHANDLER,

No. 308108
Wayne Circuit Court
LC No. 09-020949-FH

Defendant-Appellant.

Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

Defendant appeals his sentences for his three convictions of assault with intent to do great bodily harm less than murder, MCL 750.84. For the reasons set forth below, we affirm.

In three separate incidents, defendant, Sean Chandler,¹ violently assaulted students leaving Denby High School during the summer of 2009. The trial court sentenced defendant to concurrent terms of 6 1/2 to 10 years in prison for each of the convictions. Defendant appealed his sentences, and this Court ruled that the trial court cited substantial and compelling reasons to justify a departure from the guidelines. *People v Chandler*, unpublished opinion per curiam of the Court of Appeals, issued April 7, 2011 (Docket Nos. 296098, 296099, 299304), slip op at 8-10. However, the Court further ruled that the trial judge failed to adequately explain the reasons for the particular upward departure of 11 months. *Id.* at 10. Accordingly, this Court remanded the case for resentencing and an explanation of the extent of the upward departure. *Id.*

On remand, the trial court sentenced defendant to 6 to 10 years in prison for the assault with intent to do great bodily harm less than murder convictions, which reflects a 5-month upward departure from the sentencing guidelines. Here, defendant argues that the trial judge failed to explain why a poor prison adjustment, resulting in 23 misconduct citations, justifies the 5-month upward departure.

¹ We note that the judgment and register of actions both misspelled defendant's last name as Chandlger.

This Court reviews for an abuse of discretion the amount of departure from the guidelines and whether the reasons cited by the trial court are substantial and compelling enough to justify the departure. *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008). As our Supreme Court further explained in *Smith*, at 304:

Appellate courts are obliged to review the trial court's determination that a substantial and compelling reason exists for departure. Accordingly, the trial court's justification "must be sufficient to allow for effective appellate review." In [*People v Babcock*, 469 Mich 247, 259; 666 NW2d 231 (2003)], this Court explained that an appellate court cannot conclude that a particular substantial and compelling reason for departure existed when the trial court failed to articulate that reason. Similarly, if it is unclear why the trial court made a particular departure, an appellate court cannot substitute its own judgment about why the departure was justified. A sentence cannot be upheld when the connection between the reasons given for departure and the extent of the departure is unclear. When departing, the trial court must explain why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been.

As the prosecutor emphasizes, on resentencing, a court may validly take into account a defendant's prison record. *People v Houston*, 448 Mich 312, 323; 532 NW2d 508 (1994). "[J]ust as an exemplary custodial record might be found to be a mitigating circumstance, misconduct in custody may be an aggravating circumstance indicating a disposition to violence or impulsiveness." *Id.* Accordingly, the trial court correctly took into account defendant's 23 incidents of misconduct while in prison between the time he went to prison for his convictions until he was resentenced.

We hold that the trial court adequately explained the reasons for the extent of the 5-month departure. On remand, the trial court stated, "If Mr. Chandler had been doing very well, I certainly would have taken [his conduct] into account in terms of a significant reduction in the sentence." The trial court further stated, "the defendant's 29 misconducts that have been accumulated are certainly a verifiable and objective indication of why [the sentencing] departure should be to that extent." Not only did the trial judge articulate substantial and compelling reasons for the minimal upward departure, but he specifically stated that defendant's repeated misconduct while in prison explained the extent of the departure. This was clearly sufficient to allow for effective appellate review, and we affirm. *Babcock*, 469 Mich at 259 n 13; *Smith*, 482 Mich at 297, 311.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Patrick M. Meter