

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOHNATHAN ALAN DENTON,

Defendant-Appellee.

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UNPUBLISHED

November 19, 2009

No. 288522

Wayne Circuit Court

LC No. 05-002629-FH

Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order reaffirming the court's earlier decision to impose sentences of one to fifteen years each for defendant's convictions of three counts of third-degree criminal sexual conduct, MCL 750.520d(1)(a). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In a prior appeal, this Court affirmed defendant's convictions but remanded to the trial court regarding the sentences imposed, which constituted a significant downward departure from the guidelines range of 51 to 85 months. This Court determined that, although the trial court articulated several permissible factors to support its sentencing decision, it improperly considered defendant's lack of a prior criminal record as a basis for departure because that factor was already considered in the scoring of the sentencing guidelines prior record variables. *People v Denton*, unpublished opinion per curiam of the Court of Appeals, issued April 12, 2007 (Docket Nos. 267612, 267790). Accordingly, this Court remanded the case

for clarification of the record or, in the alternative, a determination whether the remaining, valid factors provided substantial and compelling reasons to support the sentence even without considering defendant's criminal history. If the trial court cannot articulate the guidelines' deficiency or justify the sentence without resorting to the improper factor, then it must resentence defendant. [*Id.*, slip op at 7 (citation omitted).]

On remand, the trial court stated that it would have still departed from the guidelines and would have imposed the same sentences had it not considered that one inappropriate factor. Plaintiff's sole claim on appeal is that the trial court erred by failing to explain why the reasons given for the departure justified the extent of the departure. We disagree.

The trial court may depart from the statutory guidelines if it “has a substantial and compelling reason for that departure and states on the record the reasons for departure.” MCL 769.34(3). Once the court has a valid basis for departing from the guidelines, it must articulate those reasons on the record and explain why those reasons justify the particular departure chosen by the court. *People v Babcock*, 469 Mich 247, 272; 666 NW2d 231 (2003); *People v Hegwood*, 465 Mich 432, 437 n 10; 636 NW2d 127 (2001). The Court reaffirmed this requirement in *People v Smith*, 482 Mich 292, 304; 754 NW2d 284 (2008), stating that when the trial court departs from the guidelines, it “must explain why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been.” In other words, the trial court must offer some explanation for the extent of the departure “independent of the reasons given to impose a departure sentence.” *Id.* at 305-306.

The trial court complied with this articulation requirement at the initial sentencing hearing. In addition to articulating the various reasons for electing to depart downward from the guidelines, the court explained that it was imposing sentences of one to fifteen years because “I believe that all of these things in his background, his age, no prior problems, his conduct before and after the charges indicate that he can be rehabilitated in a short period of time.” This was sufficient to explain why a one-year minimum sentence was more proportionate than a sentence within the guidelines. On remand, the trial court clarified, consistent with this Court’s prior decision, that the lone improper factor previously considered at defendant’s original sentencing did not affect the court’s decision to impose the sentences that it did. Accordingly, we find no error.

Affirmed.

/s/ Elizabeth L. Gleicher  
/s/ E. Thomas Fitzgerald  
/s/ Kurtis T. Wilder