

Court of Appeals, State of Michigan

ORDER

People of MI v Richard Hannable McDuff

Docket No. 313162

LC No. 89-004878

Kirsten Frank Kelly
Presiding Judge

Christopher M. Murray

Michael J. Riordan
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the October 26, 2012, order of the Wayne Circuit Court granting defendant's motion for relief from judgment hereby is REVERSED. Defendant failed to meet the burden of establishing entitlement to relief under MCR 6.508(D). A trial judge may resentence a defendant only when the previously-imposed sentence is invalid. MCR 6.429(A). Under the law applicable when defendant was sentenced, a trial court could depart from the sentencing guidelines provided the court articulated proper reasons for its deviation on the record. *People v Bryars*, 168 Mich App 523, 526; 425 NW2d 125 (1988). Here, the trial court specifically articulated reasons for departing from the guidelines: defendant's criminal record, that he was on probation at the time, and that he committed an assaultive crime within weeks of another armed robbery. The trial court thus properly took into account the factors of punishment, protection of society, rehabilitation, and deterrence in imposing sentence. *People v Sandlin*, 179 Mich App 540, 541-42; 446 NW2d 301 (1989). Further, the record reflects that defendant failed to cooperate with officials, failed to report for probation and was on probation in two other counties when he committed the offenses at issue. Defendant had not shown any indication that he intended to change his pattern of continually violating the law. The trial court did not abuse its discretion by relying on some of the same factors considered in the judicial sentencing guidelines as a basis for departure. See *People v Girardin*, 165 Mich App 264, 268; 418 NW2d 453 (1987). Consequently, defendant's sentence was not invalid and he is not entitled to resentencing. The case is remanded to the circuit court for further proceedings consistent with this order.

The motion for stay is DENIED.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

NOV 15 2012

Date

Larry S. Royster
Chief Clerk