

Court of Appeals, State of Michigan

ORDER

People of MI v Andrew Elcandus Croskey

Docket No. 319986

LC No. 2013-245754-FH

Christopher M. Murray
Presiding Judge

Kurtis T. Wilder

Michael J. Riordan
Judges

The Court, in lieu of granting defendant's delayed application for leave to appeal, VACATES the trial court's July 25, 2013 Judgment of Sentence. MCR 7.216(A)(7). Defendant's recommended minimum guidelines sentence range was 2 -17 months, an intermediate sanction, thus precluding the upward departure of a prison sentence unless supported by substantial and compelling reasons. See MCL 769.34(4)(a) and *People v Stauffer*, 465 Mich 633, 635-636; 640 NW2d 869 (2002). In articulating substantial and compelling factors supporting an upward departure, a trial court must set forth specific facts that explain why the particular case "keenly and irresistibly" grabs the court's attention such that a departure is appropriate, *People v Babcock*, 469 Mich 247, 258-259; 666 NW2d 231 (2003), and must additionally specify why this particular sentence is more proportionate than a sentence under the guidelines. *People v Smith*, 482 Mich 292, 304; 754 NW2d 284 (2008). The trial court in this case merely recited the statutory language regarding substantial and compelling reasons, and did not articulate what factors it found to support that conclusion. Additionally, the trial court did not specify why the sentence that it had imposed was more proportionate than a sentence under the guidelines.

We therefore VACATE the trial court's order and REMAND for resentencing consistent with this order. On remand, the trial court must either enter a sentence consistent with defendant's guidelines range, or articulate the substantial and compelling reasons that it found in support of a departure and why that sentence is proportionate. We do not retain jurisdiction.

It is further ordered that the motion to remand is DENIED as moot.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 05 2014

Date

Chief Clerk