

Court of Appeals, State of Michigan

ORDER

People of MI v Marcus Antoine McMullan

Docket No. 322577

LC No. 13-001304-FH

Peter D. O'Connell
Presiding Judge

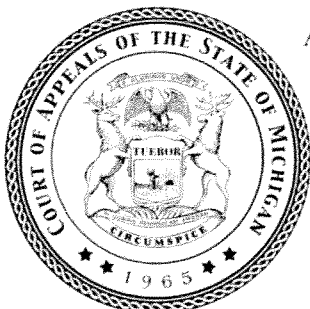
Patrick M. Meter

Stephen L. Borrello
Judges

The Court orders pursuant to MCR 7.205(E)(2) that in lieu of granting the delayed application for leave to appeal, defendant's sentence is VACATED, and this case is REMANDED to the Washtenaw Circuit Court for resentencing. The upper limit of defendant's sentencing guidelines range was less than 18 months, and the court was required to impose an intermediate sanction under MCL 769.34(4)(a) unless it provided a substantial and compelling reason to depart from the guidelines range and impose a prison term. *People v Stauffer*, 465 Mich 633, 635-636; 640 NW2d 869 (2002); *People v Lucey*, 287 Mich App 267, 270-271; 787 NW2d 133 (2010). The minimum sentence imposed did not exceed the upper limit of the guidelines range and might appear not to be a departure, and thus not to require the articulation of a substantial and compelling reason. *Stauffer*, 465 Mich at 634-635. However, "a prison sentence cannot constitute an intermediate sanction." *Lucey*, 287 Mich App at 271. Thus, the court was required to provide a substantial and compelling reason for imposing a prison sentence.

On remand, the court may impose an intermediate sanction under the guidelines, or impose a prison sentence if it finds substantial and compelling reasons to do so and states its reasons on the record, along with reasons for the extent of the departure. MCL 769.34(4)(a); *People v Smith*, 482 Mich 292, 303, 313; 754 NW2d 284 (2008). We note that a probation violation is worthy of independent consideration when a trial court is considering an upward departure from the guidelines. *People v Schaafsma*, 267 Mich App 184, 186; 704 NW2d 115 (2005) ("Because the probation violation is objective and verifiable, the trial court in its discretion may conclude that the factor provides a substantial and compelling reason to depart from the sentencing guidelines.").

We do not retain jurisdiction.



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

AUG 07 2014

Date

Chief Clerk