

Court of Appeals, State of Michigan

ORDER

People of MI v Wendy Denise Pifer

Docket No. 345928

LC No. 17-005227-FH; 17-005228-FH

Amy Ronayne Krause
Presiding Judge

Michael J. Kelly

Michael F. Gadola
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

Ronayne Krause, P.J., further states: While I agree with the case law cited by our dissenting colleague, the trial court indicated in full:

In passing sentence on you, Ms. Pifer, the court has taken into consideration the Information contained within the presentence report and the comments made today. And I guess most concerning to the court in fashioning a sentence for you is the fact that you have had multiple attempts at treatment beginning in 2008 through the court system and ending with the most recent attempt by the court to get you involved in treatment court and send you to the Hope House for treatment and then you absconded when you were supposed to be in the courtroom for treatment court.

You had, it looks like, residential in 2008 – more treatment outpatient in 2008; residential in 2012; residential in 2013; treatments at the Victory Clinic from 2013 to 2017; a detox in 2017 and then at this last most recent attempt at treatment in 2017 in which you absconded. I – I want there to be an alternative to incarceration for you and that's why we tried the Adult Treatment Court, but as we stand here today I don't trust that you won't abscond from any treatment I'd send you to and whether that's because of mental health concerns or anything else that's going on, I think now I have to balance keeping you safe and fashioning a sentence that's going to do that and get you the help that you need even if that help is just the benefit of a long time to be away from your drug of choice and have mental health treatment.

So, I understand the guidelines are zero to nine, I think that under the circumstances it's appropriate and best to exceed the sentencing – advisory sentencing guidelines.

Based on this record, I deny the delayed application for leave to appeal.

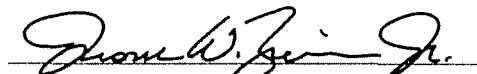
Gadola, J., would remand for resentencing, and states: Criminal sentences imposed by Michigan trial courts must be “ ‘proportionate to the seriousness of the circumstances surrounding the offense and the offender.’ ” *People v Steanhouse*, 500 Mich 453, 474; 902 NW2d 327 (2017), quoting *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). “In reviewing the reasonableness of a sentence outside the Guidelines range, appellate courts may . . . take the degree of variance into account and consider the extent of a deviation from the Guidelines.” *Id.* at 474 (quotation marks and citation omitted). If a trial court departs from the recommended sentencing guidelines range and fails to “provide adequate reasons for the extent of the departure sentence imposed,” remand is appropriate. *Id.* at 476. Here, the trial court departed from the sentencing guideline recommendation of zero to nine months in jail and instead sentenced defendant to 18 to 48 months in prison. The minimum sentence thus represents a 100% upward departure from the maximum guideline recommendation. The trial court articulated an insufficient rationale for the extent of its departure sentence, merely stating that “under the circumstances it’s appropriate and best to exceed the . . . advisory sentencing guidelines.” Because the trial court failed to sufficiently explain why its departure sentence was more proportionate under the circumstances than a guidelines sentence would have been, I would remand for resentencing.



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

DEC 21 2018

Date


Chief Clerk