

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VIVIANO JOSEPH CUEVAS,

Defendant-Appellant.

UNPUBLISHED

February 10, 2004

No. 243364

Genesee Circuit Court

LC No. 00-006250-FH

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted from a thirty to sixty month sentence imposed for a conviction of attempted unarmed robbery following a determination that he violated the terms of his probation. MCL 750.92; MCL 750.530. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

“If a probation order is revoked, the court may sentence the probationer in the same manner and to the same penalty as the court might have done if the probation order had never been made.” MCL 771.4. The court must impose a minimum sentence within the guidelines range unless a departure from the guidelines is permitted. MCL 769.34(2). The court may depart from the guidelines if it “has a substantial and compelling reason for that departure and states on the record the reasons for the departure.” MCL 769.34(3).

Assuming without deciding that the legislative sentencing guidelines apply to a sentence for violation of probation, see *People v Hendrick*, 468 Mich 916; 662 NW2d 757 (2003), the guidelines for this offense were zero to eleven months. MCL 777.66. Because the upper limit of the guidelines range was less than eighteen months, the court was required to impose an intermediate sanction unless it found a substantial and compelling reason to sentence defendant to the jurisdiction of the department of corrections. MCL 769.34(4)(a). An intermediate sanction does not include a prison sentence. *People v Stauffer*, 465 Mich 633, 635; 640 NW2d 869 (2002).

Because the trial court sentenced defendant to prison without noting that it was departing from the guidelines or stating a substantial and compelling reason for the departure, resentencing would normally be required. *People v Babcock*, 469 Mich 247, 273; 666 NW2d 231 (2003). In this case, however, defendant has completed his minimum sentence and, according to the department of corrections' Offender Tracking Information System, he has already been paroled.

Thus, it is impossible for the Court to fashion any relief and the issue is moot. *People v Bailey (On Remand)*, 218 Mich App 645, 648; 554 NW2d 391 (1996); *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood