

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROBERT WILLIAM DUKE,

Defendant-Appellee.

UNPUBLISHED

September 28, 2006

No. 262325

Livingston Circuit Court

LC No. 04-014741-FH

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant pleaded nolo contendere to first-degree home invasion, MCL 750.110a(2), aggravated assault, MCL 750.81a, consumption of alcohol by a minor, MCL 436.1703, and two counts of resisting or obstructing a police officer, MCL 750.81d(1). The trial court sentenced defendant to serve terms of four to twenty years in prison for home invasion; fifteen to twenty-four months in prison for resisting or obstructing; and one year in jail for aggravated assault, plus a fine for consumption by a minor. The prosecutor appeals by leave granted, challenging the trial court's decision to depart downward from the recommended sentencing guidelines range for defendant's minimum sentence for home invasion. We remand for a written articulation of substantial and compelling reasons for the downward departure. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

At defendant's plea proceeding, defendant deferred to the police report for the factual basis for his plea, on the ground that he had no memory of his own, owing to his state of intoxication at the time.

That police report indicates that the victim described being at home, asleep with his girlfriend, when defendant broke into the home and confronted them in the bedroom. The victim yelled for defendant to leave the house, but defendant ran toward him and struck him in the face with his fist. The victim asked his companion to call 911, and attempted to grab a baseball bat, while defendant ran from room to room in an apparent attempt to leave the home. The victim then opened the front door and defendant left. The police responding to the scene saw a person fitting defendant's description run across the roadway a short distance away, and then found defendant lying on his back in a yard. When the police identified themselves, however, defendant again ran. The police caught defendant after a brief foot chase, and defendant struggled as the police attempted to place him in handcuffs. Test results indicated a blood alcohol level of .14%.

For purposes of the presentence investigation report (PSIR), defendant described becoming “very drunk” while attending a birthday party. According to defendant, he left the party and ran down the street to place an order with some participants who were going to Taco Bell, then “blacked out.” Defendant stated: “They say I committed Home Invasion. I say I was trying to find my way back to the house. It was a trailer park that I wasn’t familiar with.” At sentencing, defendant said to the victim, “I apologize. I wouldn’t have done it if I was sober. I don’t remember it.”

The recommended minimum sentence range on these facts is eighty-four to one hundred forty months. The minimum actually imposed, forty-eight months, was substantially below the low end of the recommended range.

A sentencing court departing from the guidelines must state on the record its reasons for the departure, and may deviate for only a “substantial and compelling reason” MCL 769.34(3). See also *People v Babcock*, 469 Mich 247, 255-256, 272; 666 NW2d 231 (2003). A sentencing court must articulate its reasons for departing from the guidelines range both on the record at sentencing and in writing on the guidelines departure form. *People v Armstrong*, 247 Mich App 423, 426; 636 NW2d 785 (2001). See also MCR 6.425(D)(1); *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). Remand to the trial court to complete the required written record is the appropriate remedy. *Armstrong, supra*.

We note that the trial court is in the better position to evaluate the facts and circumstances of each individual defendant’s case, and without the full written articulation of the court’s reasons for departing from the sentencing guidelines, we are not positioned to give the court’s judgment the deference it deserves, and cannot therefore evaluate the merits of the prosecutor’s arguments without that written record.

Remanded for articulation in writing of the reasons for the downward departure from the sentencing guidelines. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper