

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHUR DANIEL NEAL,

Defendant-Appellant.

UNPUBLISHED

August 28, 2007

No. 270056

Wayne Circuit Court

LC No. 04-000650-01

Before: Owens, P.J., and White and Murray, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his plea-based convictions of carrying a concealed weapon, MCL 750.227, and felon in possession of a firearm, MCL 750.224f. Pursuant to the plea agreement, the court sentenced defendant to 40 to 60 months' imprisonment for each conviction. We affirm.

At the outset, we note the unusual nature of this case. Specifically, before entering a guilty plea, defendant was charged with and convicted, following a bench trial, of carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. At the conclusion of the bench trial but before sentencing, the prosecution and defendant, with approval of the trial court, negotiated an alternative resolution to the case whereby defendant pleaded guilty to carrying a concealed weapon and felon in possession of a firearm in exchange for a dismissal of the felony-firearm charge and a sentence of 40 to 60 months' imprisonment for both convictions.

On appeal, defendant argues he is entitled to resentencing because the court failed to articulate substantial and compelling reasons supporting the upward departure from the appropriate sentencing guidelines range and because his sentence is disproportionate. We disagree. A departure from the sentencing guidelines is generally appealable even if it was not raised at sentencing, in a motion for resentencing, or in a motion to remand with this Court. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 310; 684 NW2d 669 (2004). However, “a defendant waives appellate review of a sentence that exceeds the guidelines by understandingly and voluntarily entering into a plea agreement to accept that specific sentence.” *People v Wiley*,

472 Mich 153, 154; 693 NW2d 800 (2005). Here, in an uncontested valid plea that helped defendant receive a lesser sentence than he would have faced if he was convicted as charged,¹ defendant agreed to a sentence that exceeded the guidelines range. Therefore, the court was not required to articulate substantial and compelling reasons supporting the upward departure. *Id.* Similarly, “a defendant who pleads guilty with knowledge of the sentence will not be entitled to appellate relief on the basis that the sentence is disproportionate.” *Id.* Consequently, defendant has waived appellate review of the sentence imposed.

Affirmed.

/s/ Donald S. Owens

/s/ Helene N. White

/s/ Christopher M. Murray

¹ This is so because defendant would have faced a mandatory five-year sentence for the felony-firearm, second offense conviction, in addition to the sentences for carrying a concealed weapon and felon in possession of a firearm.