

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
March 1, 2012

v

IMRAN KHANANI,

No. 301138
Wayne Circuit Court
LC Nos. 09-030086-FJ;
10-001149-FH;
10-003752-FH

Defendant-Appellee.

Before: DONOFRIO, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

STEPHENS, J. (*dissenting*).

I write to respectfully dissent from the conclusion of the majority that the trial judge abused her discretion in affording the defendant status under the Holmes Youthful Trainee Act (HYTA), MCL 762.11 *et seq.*, through a sentence that requires incarceration, participation in treatment programs, employment and a return to school. While I agree that the majority has correctly articulated the law applicable to this circumstance, I do not share their view regarding whether the trial judge has sufficiently articulated her reasons for the sentence and, therefore, would remand for further articulation of that reasoning.

HYTA is one of the possible sentencing options afforded to trial judges. Like every other sentencing option, there are four purposes of a HYTA sentence: protection of society, punishment of the offender, deterrence from further criminality by the offender or others and rehabilitation. See *People v Sabin*, 242 Mich App 656, 661-662; 620 NW2d 19 (2000). As with all sentences in Michigan, the sentence is to be particularized to the individual and the offense. The majority correctly notes that if the trial judge's basis for the sentence was to protect and preserve defendant's family, the reason is not within the range of principled outcomes, in part because it is a sentence that is not rooted in factors peculiar to the defendant himself. After all, every offender has some form of family. However, after a careful reading of a fairly lengthy sentencing transcript, I am not left with a firm conviction that protection or preservation of defendant's family was either the sole or the primary purpose of the HYTA sentence.

In a freewheeling colloquy with defendant, the trial judge discussed defendant's immaturity and his intense desire to fit into some group as a result of his feelings of academic inferiority. It appears that, based upon that dialogue, she implicitly found defendant to be more of follower than a leader. She seemed to perceive that, due in part to his family support,

immaturity, insecurity and developing self-examination, he was susceptible to rehabilitation. She ordered his participation in jail programming, albeit without nominating specific programs, as an aid to the rehabilitative process. In fact, she required that this defendant be exempt from jail crowding release without the sentencing judge's permission. Such a caveat would allow the trial judge to review not only whether defendant participated in jail programming, but also whether he benefited from the programming, much like the way a court would monitor compliance with a parent agency agreement. A failure to benefit or participate might well be a basis to revoke HYTA status. The judge emphasized that failure to meet his HYTA requirements could result in a sentence that would dwarf the presumptive guidelines sentence he faced had he not been granted HYTA. Such a warning addresses the deterrence aspect of sentencing as surely as the incarceration addressed both protection of society and punishment.

While I do not believe that the trial judge based her extraordinary sentence in this case on the desire to preserve and protect defendant's family, it is unclear which factors ultimately motivated her decision to exercise her discretion in this manner. I believe a remand for a full articulation of the basis of her decision is required and I would remand to accomplish that objective.

/s/ Cynthia Diane Stephens