STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SARA ANN TRINGALI,

Defendant-Appellee.

UNPUBLISHED
March 19, 2013

No. 308972
Oakland Circuit Court
LC No. 2011-236344-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JEFFREY ALLEN BROWN,

Defendant-Appellee.

No. 308973
Oakland Circuit Court
LC No. 2011-238244-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SHANTEL ELAINE DEBUS,

Defendant-Appellee.

No. 308996
Oakland Circuit Court
LC No. 2011-235972-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NATHAN ALEXANDER CALDERWOOD,

Defendant-Appellee.

No. 308998
Oakland Circuit Court
LC No. 2011-237826-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ALBERT STRICKLAND, JR.,

Defendant-Appellee.

No. 309202
Oakland Circuit Court
LC No. 2011-239227-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARVIN DENNIS LATOUR,

Defendant-Appellee.

No. 309620
Oakland Circuit Court
LC No. 2011-238383-FH

Before: CAVANAGH, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

In these consolidated cases, this Court granted the prosecutor leave to appeal six judgments of sentence entered by the trial court.[1] Defendants in five of the six cases pleaded guilty to operating a motor vehicle under the influence of alcohol (OUIL), third offense, MCL

[1] *People v Tringali*, unpublished order of the Court of Appeals, entered October 17, 2012 (Docket Nos. 308972, 308973, 308996, 308998, 309202, 309620).

257.625(9)(c), and the sixth defendant (Shantel Elaine Debus) pleaded guilty to operating a motor vehicle under the influence of alcohol with an occupant less than 16 years old, second offense, MCL 257.625(7)(a)(ii). The trial court sentenced each defendant to two years' probation and 30 days in jail for the OUIL convictions. In lieu of serving time in jail, defendants were permitted to enroll in the Oakland County Sheriff's Work Release Tether Program for the duration of their jail term. For the reasons set forth below, we reverse and remand for resentencing.

The prosecutor argues that the trial court erred in permitting defendants to enroll in an electronic monitoring work-release program in lieu of serving jail time because electronic monitoring work-release is not the equivalent of serving jail time, which is required under the plain language of MCL 257.625(7)(a)(*ii*) and (9)(c)(*ii*).

This Court reviews de novo questions of statutory interpretation. *People v Flick*, 487 Mich 1, 8-9; 790 NW2d 295 (2010). Although a trial court's imposition of sentence is typically reviewed for an abuse of discretion, *People v Underwood*, 278 Mich App 334, 337; 750 NW2d 612 (2008), when there is clear statutory direction regarding sentencing, sentencing is not a matter of the trial court's discretion, and failure to comply with a legislative mandate requires reversal, *People v Pennebaker*, 298 Mich App 1, 4; 825 NW2d 637 (2012).

This Court recently settled the issue raised on appeal in *Pennebaker*. In *Pennebaker*, the defendant pleaded guilty to operating a motor vehicle while intoxicated with an occupant less than 16 years old, second offense, MCL 257.625(7)(a)(*ii*). *Pennebaker*, 298 Mich App at 3. The trial court sentenced the defendant to 18 months' probation and 30 days in jail with authorization to participate in Oakland County's electronic monitoring work-release program. *Id*. at 3-4. On appeal, this Court reversed the sentence holding that it violated the plain language of the sentencing provision, MCL 257.625(7). *Id*. at 4. Specifically, this Court opined:

> MCL 257.625(7)(a)(ii) states that a defendant 'shall be sentenced . . . to either of the following.' This unequivocally means that the trial court *must* sentence defendant to one of two options, a term in prison or not less than 30 days in jail and community service. The 'use of the term 'shall' . . . indicates mandatory rather than discretionary action.' MCL 257.625(7)(a)(ii)(B) further states that '[t]his term of imprisonment shall not be suspended.' This language unequivocally means that the trial judge must sentence a defendant to a minimum of 30 days in the county jail. [*Id*. at 6 (citations omitted).]

Pennebaker is controlling here. The primary sentencing provision at issue in these appeals, MCL 257.625(9)(c)(*ii*), provides:

> (9) If a person is convicted of violating subsection (1) or (8), all of the following apply:
>
> * * *
>
> (c) If the violation occurs after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person is guilty

> of a felony and shall be sentenced to pay a fine of not less than $500.00 or more than $5,000.00 and to either of the following:
>
> (*i*) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.
>
> (*ii*) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.
>
> (d) A term of imprisonment imposed under subdivision (b) or (c) shall not be suspended.

Defendant Debus, who was convicted of operating a motor vehicle under the influence of alcohol with an occupant less than 16 years old, second offense, MCL 257.625(7)(a)(*ii*), is subject to an identical punishment scheme.

The statutory provisions cited above are the same as the one at issue in *Pennebaker*. As the Court in *Pennebaker* stated, "The placement of an electronic-monitoring device on defendant is not 'imprisonment in the county jail' as required by the statute." *Pennebaker*, 298 Mich App at 7, citing *People v Britt*, 202 Mich App 714, 717; 509 NW2d 914 (1993). The statutory language "unequivocally means that the trial judge must sentence a defendant to a minimum of 30 days in the county jail." *Pennebaker*, 298 Mich App at 6. While we continue to acknowledge the serious problem of overcrowding in our county jails, *id*. at 8-9, it is not for this Court to determine whether a statute is good public policy, *People v Boomer*, 250 Mich App 534, 538; 655 NW2d 255 (2002). Because the Legislature made clear that persons convicted multiple times of OUIL must serve no less than 30 days in jail, the trial court erred in not requiring each defendant to serve the statutorily mandated minimum of 30 days in jail. We reverse defendants' sentences regarding each OUIL conviction and remand for resentencing in each case consistent with MCL 257.625 and *Pennebaker*.

Reversed and remanded. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Douglas B. Shapiro