

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

LEONARD RICHARD OLEAR,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED

April 21, 2011

No. 297155

Macomb Circuit Court

LC No. 2009-001960-FH

Before: FORT HOOD, P.J., and TALBOT and MURRAY, JJ.

MURRAY, J. (*concurring in part, dissenting in part*).

I concur with the majority opinion in all respects except for its decision to offer advice to the trial court should it, on remand, consider again departing from the sentencing guidelines. I agree with the majority to the extent that the trial court's downward departure from the sentencing guidelines could not be supported by defendant having to register as a sex offender and his supposed inability to continue his law enforcement career. However, I disagree with the majority's conclusion that defendant's age, prior record, work history, and family and community support could not constitute substantial and compelling reasons for a departure should the trial court so conclude on remand. Indeed, in *People v Fields*, 448 Mich 58, 77; 520 NW2d 176 (1995), the Supreme Court specifically approved those factors as appropriate considerations in a departure. The Court more recently approved of these same factors in *People v Daniel*, 462 Mich 1, 7; 609 NW2d 557 (2000). These factors may also be useful in the trial court's obligation to make each sentence proportionate to the crime and offender, which requires taking into consideration all of the circumstances in the case, see *People v Babcock*, 469 Mich 247, 262; 666 NW2d 231 (2003). Additionally, I do not believe we should place handcuffs on the trial court's decision on remand because even if particular items are already taken into consideration under the offense variables, the trial court could still conclude that there was inadequate or disproportionate weight given to those factors. *People v Young*, 276 Mich App 446, 454-455; 740 NW2d 347 (2007). Consequently, I would leave the determination of the appropriateness of a future deviation to any subsequent appeal filed by the parties after the resentencing on remand.

/s/ Christopher M. Murray