

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL J. PARKER,

Defendant-Appellee.

UNPUBLISHED
September 9, 2003

No. 239875
Wayne Circuit Court
LC No. 01-010590-01

Before: Markey, P.J., and Cavanagh and Saad, JJ.

MEMORANDUM.

Plaintiff appeals as of right defendant's bench trial conviction for first-degree home invasion, MCL 750.110a(2), and felonious assault, MCL 750.82. We reverse and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, plaintiff argues that the trial court did not state a substantial and compelling reason for departing from the legislative sentencing guidelines and sentencing defendant to probation.

A sentencing court may depart from the appropriate sentence range established under the guidelines if the court has a substantial and compelling reason for the departure, and states the reason on the record. MCL 769.34(3). The existence of a particular factor is a factual determination reviewed for clear error. *People v Babcock*, 244 Mich App 64, 75-76; 624 NW2d 479 (2000). The determination that a factor is objective and verifiable is reviewed as a matter of law. *Id.*, 77-78. The determination that the objective and verifiable factors constitute substantial and compelling reasons to depart from the statutory minimum sentence is reviewed for abuse of discretion. *Id.*, 78.

Substantial and compelling reasons exist only in exceptional cases and reasons justifying departure should keenly or irresistibly grab the court's attention and be recognized as having considerable worth in determining the length of a sentence. *Id.*, 74-75.

The trial court cited a mixture of objective and subjective factors in its departure. Defendant's marital and family status, his work history, and his lack of a criminal record are objective factors. Being a good citizen and the probability that he will not offend again are subjective factors that cannot support a departure.

The objective reasons stated do not appear to have considerable worth in determining the length of a sentence. Marital and family status do not keenly and irresistibly grab the court's attention. The fact that defendant was working was a positive factor, but it is not a compelling reason. Defendant's lack of criminal history is already considered in the guidelines scoring, and the court did not find that the characteristic was given inadequate weight. MCL 769.34(3)(b).

Reversed and remanded for resentencing. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Mark J. Cavanagh

/s/ Henry William Saad