

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JARVIS LESTER NOLAN,

Defendant-Appellant.

UNPUBLISHED
November 1, 2005

No. 253687
Wayne Circuit Court
LC No. 03-011330-01

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

MEMORANDUM.

Defendant appeals by right from his sentence following a jury trial conviction for possession of less than twenty-five grams of cocaine. MCL 333.7403(2)(a)(v). Because the trial court did not state on the record its reasons for not imposing an intermediate sanction, MCL 769.34(4)(a), we remand for resentencing or rearticulation. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was on probation when the instant offense was committed. He was sentenced to concurrent prison terms of eleven months to four years for this offense and three to five years for the original offense. Defendant's guidelines recommended minimum sentence was from zero to eleven months. Therefore, MCL 769.34(4)(a) required an intermediate sanction unless the trial court stated a substantial and compelling reason to depart from the guidelines. MCL 769.34(3); *People v Stauffer*, 465 Mich 633, 635; 640 NW2d 869 (2002). The trial court here did not state on the record any substantial and compelling reasons for so doing. The trial court noted that defendant had several chances at probation and failed but did not specifically state this was its reason for departing from the required intermediate sanction or provide other substantial and compelling reasons for the departure. Because the trial court did not state on the record a substantial and compelling reason for departure from the guidelines, we must remand for articulation of such a reason or resentencing. *People v Babcock*, 469 Mich 247, 258-259; 666 NW2d 231 (2003).

We remand for resentencing or rearticulation; we do not retain jurisdiction.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane E. Markey