

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CARL RICHARD CANUP,

Defendant-Appellant.

UNPUBLISHED
September 20, 2011

No. 299247
Macomb Circuit Court
LC No. 2010-000872-FH

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

PER CURIAM.

Defendant pled guilty to one count of failure to pay child support, MCL 750.165, and was sentenced to one to four years' imprisonment. Defendant appeals by delayed leave granted, contending that the sentencing court erred by imposing an upward departure without articulating substantial and compelling reasons for the departure. We agree, vacate the sentence, and reverse and remand for resentencing.

Defendant pleaded guilty to failure to pay child support. At sentencing, the prosecutor acknowledged that the guidelines were 0 to 17 months, and defendant had spent approximately 90 days in jail. Additionally, the probation department recommended a five-year term of probation. During the discussion regarding prior non-payment and available employment, the sentencing court stated, "When you have civil enforcement, that's a reason to go over the guidelines." The trial court then imposed a term of one to four years' imprisonment without any further justification for the departure.

When a sentence falls outside the appropriate guidelines range, it may be challenged on appeal even if the issue was not raised at sentencing, in a motion for resentencing, or in a motion to remand. *People v McGraw*, 484 Mich 120, 131; 771 NW2d 655 (2009). When reviewing a departure from the sentencing guidelines, the extent of the departure is reviewed for an abuse of discretion. *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008). However, the reasons given for the departure are reviewed for clear error. *Id.*

A court may depart from the sentencing guidelines range when it has substantial and compelling reasons to do so and, the reasons for the departure are stated on the record. MCL 769.34(3); *People v Buehler*, 477 Mich 18, 727 NW2d 127 (2007). To justify the departure, the proffered reasons must be objective and verifiable, must keenly or irresistibly grab the court's attention, and be of considerable worth. *Smith*, 482 Mich at 299. If this Court concludes that the

trial court did not have substantial and compelling reasons for the departure, we must remand for resentencing. MCL 769.34(11); *People v Babcock*, 469 Mich 247, 265; 666 NW2d 231 (2003).

In the present case, we conclude that the trial court did not set forth substantial and compelling reasons for the departure. The only reason offered for the upward departure was the fact that a civil judgment was involved. Although this statement is objective and verifiable, it does not irresistibly grab our attention. *Smith*, 482 Mich at 299. Moreover, the trial court offered no other reason in support of the departure. Accordingly, we vacate the sentencing and remand for resentencing.¹

We vacate the sentence, and reverse and remand for resentencing. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause

¹ The sentencing judge has retired from the bench. Therefore, we need not address defendant's request to remand for resentencing before a different judge. We also need not address defendant's argument that he was denied the right to allocute at sentencing.