

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SAMUEL NORMAN,

Defendant-Appellee.

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UNPUBLISHED  
September 13, 2012

No. 305068  
Wayne Circuit Court  
LC No. 11-004182-FH

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

PER CURIAM.

The prosecution appeals by delayed leave granted the trial court's sentences imposed for defendant's plea-based convictions of two counts of first-degree home invasion, MCL 750.110a(2), and two counts of larceny in a building, MCL 750.360. The trial court downwardly departed from the sentencing guidelines and sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to concurrent terms of 4 to 30 years' imprisonment for his first-degree home invasion convictions and 2 to 4 years' imprisonment for his larceny in a building convictions. Because the trial court failed to articulate a substantial and compelling reason justifying the downward departure, we vacate defendant's sentences and remand for resentencing.

At approximately 11:00 a.m. on July 28, 2010, defendant forced his way into Sam Pellerito's home and demanded money. Pellerito was 88 years old, suffered from severe rheumatoid arthritis, and was confined to a wheelchair. Defendant drank two bottles of Pellerito's wine and stole \$30 worth of canned goods. Later the same day, at around 3:00 p.m., defendant again forced his way into Pellerito's home and demanded money. Defendant ate two cans of food and left with approximately \$40 worth of canned goods and cleaning supplies. Defendant pleaded no contest to the charges pursuant to a *Cobbs*<sup>1</sup> agreement for the sentences imposed.

The prosecution argues that the trial court erred by downwardly departing from the sentencing guidelines range because the court failed to articulate a substantial and compelling

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<sup>1</sup> *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

reason for the departure. A sentencing court may depart from the appropriate sentencing guidelines range if it has a “substantial and compelling” reason for doing so and articulates that reason on the record. MCL 769.34(3). A substantial and compelling reason is “an objective and verifiable reason that keenly and irresistibly grabs [the court’s] attention” and “is of considerable worth in deciding the length of a sentence.” *People v Babcock*, 469 Mich 247, 258; 666 NW2d 231 (2003) (quotation marks and citation omitted). “To be objective and verifiable, a reason must be based on actions or occurrences external to the minds of those involved in the decision, and must be capable of being confirmed.” *People v Horn*, 279 Mich App 31, 43 n 6; 755 NW2d 212 (2008). A substantial and compelling reason for departure exists only in exceptional cases. *Babcock*, 469 Mich at 258. Further, “[w]hen departing, the trial court must explain why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been[.]” and must explain why its reasons for departure justified the extent of the particular departure imposed. *People v Smith*, 482 Mich 292, 304; 754 NW2d 284 (2008).

We review for clear error a trial court’s factual determination that there exists a particular factor for departure. *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007). “[W]hether the factor is objective and verifiable is a question of law that this Court reviews de novo. *Id.* We review for an abuse of discretion the trial court’s determination that an objective and verifiable factor constitutes a substantial and compelling reason to depart from the sentencing guidelines range. *Id.* “A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes.” *Id.*

In this case, the trial court articulated the following reasons in support of its downward departure from the sentencing guidelines:

I’m looking at Mr. Norman’s record.

It’s clear that he does have mental issues.

He was sentenced to the Department of Corrections a couple more times.

He was sentenced to a term, up to fourteen years in 1995.

I’m sorry, in 1996.

He was later discharged.

He was in there again.

Did some time.

The reason I’m going below the guidelines is because this is almost like punishing a person with one leg, that they can’t run as fast as somebody else.

Mr. Norman does have some problems.

We’re trying to address those problems.

And hopefully, four years in prison with mental health treatment, and any kind of counseling that he can get, should help.

But, I can't see putting him in there for twenty or thirty years, or even eight years, like you're saying.

So that's the reason I'm giving for the sentence that, that I'll impose.

\* \* \*

This is an attempt to try to get Mr. Norman some help.

Hopefully, the Department of Corrections will understand that they haven't been doing much in the way of helping him in the first place.

So, maybe they can do something.

Thus, the trial court's departure was based on the fact that defendant has a mental illness and will receive mental health treatment while incarcerated.

The trial court's reasons are not substantial and compelling reasons justifying a downward departure. Although defendant's diagnosis of paranoid schizophrenia is objective and verifiable, it is not a factor that keenly and irresistibly grabs our attention considering that defendant was released from prison only ten days before he committed the instant offenses and admits that he was not taking his medication prescribed for his mental illness. Moreover, the fact that defendant will likely receive mental health treatment while incarcerated, even if objective and verifiable, is likewise not a substantial and compelling reason for a departure. If defendant receives mental health treatment while incarcerated, he will receive such treatment regardless of the downward departure and not *because* of the departure. Thus, this factor is not a substantial and compelling reason to depart from the guidelines range. In short, this is not an "exceptional case" justifying a downward departure from the sentencing guidelines.<sup>2</sup> See *Babcock*, 469 Mich at 258.

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

/s/ Mark J. Cavanagh  
/s/ Henry William Saad  
/s/ Pat M. Donofrio

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<sup>2</sup> We also note that the prosecution correctly argues that the trial court failed to explain why its reasons for departure justified the *extent* of the particular departure imposed. See *Smith*, 482 Mich at 304.