

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LUTETTUS PERRY,

Defendant-Appellee.

UNPUBLISHED

May 27, 2003

No. 239051

Oakland Circuit Court

LC No. 01-176416-FH

Before: Whitbeck, C.J., and White and Donofrio, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent. I do not agree that the court abused its discretion in concluding that the combination of the concededly objective and verifiable factors of age and health constituted substantial and compelling reasons for departure. It was uncontested that defendant was sixty-four years old and underwent kidney dialysis three times a week. The court concluded that defendant would not survive the mandatory twenty-three year minimum sentence, and sentenced him to consecutive minimum terms totaling thirteen years. Given the combination of defendant's age and health, this was not an abuse of discretion.

/s/ Helene N. White