

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARTIN DUANE DEAN,

Defendant-Appellee.

UNPUBLISHED

October 31, 2006

No. 266438

Bay Circuit Court

LC No. 05-010152-FH

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

The prosecution appeals by delayed leave granted from the trial court's order of probation, sentencing defendant Martin Dean to 60 months' probation, with 365 days in jail, on his plea-based conviction of second-degree home invasion.¹ We remand for resentencing.

I. Basic Facts And Procedural History

At the time of the underlying offense, Dean was a firefighter who had access to the keys to many locks, one of which he used to enter George White's apartment. Late one night in February 2005, White heard the front door of his apartment open. White arose from his bed to investigate and confronted Dean inside the apartment. Dean, who was wearing a fire department jacket, claimed he was checking the apartment's alarm system. Dean admitted at his plea proceeding that his true intent was to steal White's prescription pain medication to support his drug addiction.

As a result of this incident, and four other similar incidents in other apartments, Dean pleaded guilty to five counts of second-degree home invasion. The recommended range for Dean's minimum sentence under the sentencing guidelines was 29 to 57 months' imprisonment. Over the prosecution's objection, the trial court, citing Dean's motivation, prospects for reform, and hardships already suffered, departed downward.

¹ MCL 750.110a(3).

II. Sentencing

A. Standard Of Review

The prosecution argues that, in departing downward from the sentencing guidelines, the trial court improperly relied on factors that were not substantial and compelling, or objective and verifiable. We review for clear error whether a particular factor exists.² We review de novo whether a factor is objective and verifiable.³ And we review for an abuse of discretion whether a reason is substantial and compelling.⁴ “An abuse of discretion occurs . . . when the trial court chooses an outcome falling outside this principled range of outcomes.”⁵

B. Downward Departure

“A court may depart from the appropriate sentence range established under the sentencing guidelines . . . if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure.”⁶ “[A] substantial and compelling reason must be construed to mean an objective and verifiable reason that keenly or irresistibly grabs our attention . . . and exists only in exceptional cases.”⁷ “[O]nly those factors that are objective and verifiable may be used to judge whether substantial and compelling reasons exist”⁸

In support of its downward departure, the trial court first cited Dean’s motivation for the home invasions, reasoning that his actions were less morally culpable because he committed the offenses out of a need to support his drug addiction rather than for greed or monetary gain. However, it is inherently difficult to ascertain intent because a person’s motivation is not external to that person’s mind, and so cannot be objective and verifiable.⁹ The trial court thus erred in treating Dean’s motivation as an objective and verifiable factor. Further, the trial court’s regarding of Dean’s quest for drugs as “not being motivated by greed or monetary gain” was incorrect. Dean’s admission that he was seeking drugs indicates that he acted on pure greed, intending to deprive White of his property. Although he was not seeking to steal money, Dean intended to deprive White of property and thus subject White to a loss that could be measured in dollars. The trial court thus abused its discretion in regarding Dean’s pursuit of drugs, as opposed to money or other property, as a substantial and compelling reason for a sentencing departure.

² *People v Babcock*, 469 Mich 247, 264; 666 NW2d 231 (2003).

³ *Id.*

⁴ *Id.* at 264-265.

⁵ *Id.* at 269.

⁶ MCL 769.34(3).

⁷ *Babcock*, *supra* at 257-258 (citation and internal quotation marks omitted).

⁸ *Id.* at 257, quoting *People v Fields*, 448 Mich 58, 62; 528 NW2d 176 (1995).

⁹ See *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

Next, the trial court determined that a “local sentence,” rather than imprisonment, would prove more beneficial to both Dean and the community. This is a combination of personal opinion and factual speculation that cannot be objectively verified. A criminal sentence should reflect the goals of disciplining and reforming the offender, protecting society, and deterring others from similar misconduct.¹⁰ Possible rehabilitation is thus one factor to be balanced against, but not used to trump, the less defendant-friendly goals of sentencing. Departing from the sentencing guidelines by imposing a “local sentence” instead of imprisonment means weakening specific deterrence, by way of a shorter term of incarceration, and also general deterrence, by displaying leniency in response to what is a serious crime.

The trial court also reasoned that Dean had already paid a significant price for his crimes, namely the loss of his family and employment. Although objective and verifiable, neither loss grabs our attention as being exceptional. That interpersonal relationships can suffer as the result of a substance abuse problem and an attendant crime spree is sadly unremarkable. That a firefighter using that status to break into a residential apartment in search of drugs thereby forfeits that status is only fitting and proper. Because neither of these factors is substantial or compelling, we conclude that the trial court abused its discretion in using them as bases for a downward departure.

Because the trial court relied on factors that were not substantial and compelling, or objective and verifiable, in departing from the sentencing guidelines, we vacate Dean’s sentence and remand this case to the trial court for resentencing.

Remanded for resentencing. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette

¹⁰ *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972).