

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TROY ANTHONY MYERS,

Defendant-Appellant.

UNPUBLISHED

September 28, 2001

No. 231990

Genesee Circuit Court

LC No. 00-005408-FH

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted from a plea-based conviction of fourth-degree criminal sexual conduct (CSC), MCL 750.520e, for which he was sentenced to sixteen to twenty-four months' imprisonment. We remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Fourth-degree CSC is a class G offense subject to a two-year maximum sentence. MCL 750.520e(2); MCL 777.16y. Except as otherwise provided or authorized by the guidelines, the court must impose a minimum sentence within the guidelines range. MCL 769.34(2). The court is also required to impose "intermediate sanctions" in certain cases, including when the upper limit of the guidelines is eighteen months or less unless the court states on the record a substantial and compelling reason to impose a prison sentence. MCL 769.34(4)(a). The intermediate sanction may include a jail term that does not exceed the upper limit of the minimum sentence range or twelve months, whichever is less. *Id.*

As scored, the guidelines placed defendant in the D-III category, where the minimum sentence range is two to seventeen months'. See MCL 777.68. Therefore, pursuant to MCL 769.34(4)(a), the court could not impose a minimum sentence greater than twelve months unless it found a substantial and compelling reason. However, the court did not state on the record that it was departing from the guidelines, did not note on the sentencing information report or a departure form that the sentence was a departure from the guidelines, and did not advise defendant that he could appeal the sentence "on grounds that it is longer or more severe than the appropriate sentence range." See MCL 769.34(4)(a); MCL 769.34(7). Further, because the minimum sentence was within the guidelines range itself, it appears that the court did not intend to depart from the guidelines but simply overlooked the fact that intermediate sentencing was

required in this case. Therefore, we remand this case for resentencing. See MCL 769.34(10), (11).

Remanded for resentencing. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jessica R. Cooper