

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

WADE DILLARD,

Defendant-Appellee.

UNPUBLISHED
February 24, 2005

No. 251779
Wayne Circuit Court
LC No. 00-009815

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

MEMORANDUM.

Plaintiff appeals by delayed leave granted defendant's sentence of five years' probation, with six months in jail, for his plea-based conviction for delivery of more than 50, but less than 225 grams of cocaine. MCL 333.7401(2)(a)(iii). We affirm.

On appeal, plaintiff argues that the court erred in departing from the sentencing guidelines, which were scored at twelve to twenty months. A sentencing court may depart from the appropriate sentence range established under the sentencing guidelines if the court has a substantial and compelling reason for the departure and states the reason on the record. MCL 769.34(3). The existence of a particular factor is a factual determination reviewed for clear error. *People v Babcock*, 469 Mich 247, 264; 666 NW2d 231 (2003). The determination that a factor is objective and verifiable is reviewed as a matter of law. *Id.* The determination that the objective and verifiable factors constitute substantial and compelling reasons to depart from the statutory minimum sentence is reviewed for abuse of discretion. *Id.* at 265.

Substantial and compelling reasons exist only in exceptional cases, and reasons justifying departure should keenly or irresistibly grab the court's attention and be recognized as having considerable worth in determining the length of a sentence. *Id.* at 257.

This Court's review is hampered by the absence of the sentencing transcripts. There is no indication that plaintiff attempted to file a settled statement of facts to serve as a substitute for the transcript. MCL 7.210(B)(2). Failure to provide this Court with the relevant transcript constitutes a waiver of the issue. *People v Anderson*, 209 Mich App 527, 535; 531 NW2d 780 (1995).

In the absence of the transcript, plaintiff relies on the reasons stated on the SIR departure evaluation form. Plaintiff acknowledges that some of the reasons are objective factors that are a

proper basis for a departure. Defendant's lack of a criminal record, his employment, his college education, his cooperation with police, and his volunteer work are all appropriate factors to consider. *People v Fields*, 448 Mich 58, 76-77; 528 NW2d 176 (1995). Given the failure of plaintiff to provide the sentencing transcript or a settled statement of facts, there is no showing that the trial court abused its discretion.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio