

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
January 15, 2013

v

MICHAEL ANTHONY COUCH,  
Defendant-Appellant.

No. 309617  
Kent Circuit Court  
LC No. 11-012020-FH

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Before: OWENS, P.J., and FITZGERALD and RIORDAN, JJ.

PER CURIAM.

Defendant pleaded guilty of possession of a financial transaction device without consent, MCL 750.157n(1), and the trial court sentenced him to a prison term of one to four years. Defendant appeals by delayed leave granted. We affirm defendant's convictions but remand for resentencing or rearticulation of a substantial and compelling reason for departing from the sentencing guidelines.

Defendant argues that the trial court erred in departing from the sentencing guidelines. Whether a factor is a substantial and compelling reason to depart from the sentencing guidelines is reviewed for an abuse of discretion. *People v Babcock*, 469 Mich 247, 265-266; 666 NW2d 231 (2003). In this case, defendant's recommended minimum sentence range was 0 to 17 months. Under MCL 769.34(4)(a), when the upper limit of a recommended minimum sentence range is 18 months or less,

the court shall impose an intermediate sanction unless the court states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the department of corrections. An intermediate sanction may include a jail term that does not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever is less.

MCL 769.31(b) defines "intermediate sanction" as "probation or any sanction, other than imprisonment in a state prison or state reformatory, that may lawfully be imposed." Thus, a prison sentence cannot constitute an intermediate sanction. *People v Muttscheler*, 481 Mich 372, 375; 750 NW2d 159 (2008).

In explaining its decision to sentence defendant to the jurisdiction of the department of corrections rather than to impose an intermediate sanction under MCL 769.34(4)(a), the court

referred to the inefficiencies of sentencing defendant to jail time where defendant would first have to serve additional time in prison for his parole violation, resulting in two agencies handling defendant's sentences and the lack of a coordinated supervisory or rehabilitative plan. This Court addressed a similar situation in *People v Lucey*, 287 Mich App 267; 787 NW2d 133 (2010), and held that "[t]he fact that a defendant might have to serve county jail time following additional prison incarceration for a parole violation cannot be a substantial and compelling reason to depart from the sentencing guidelines." *Id.* at 273. Thus, we conclude that the trial court failed to articulate a substantial and compelling reason to depart from the sentencing guidelines and that the court abused its discretion in sentencing defendant to the jurisdiction of the department of corrections. *Babcock*, 469 Mich at 265-266.

We affirm defendant's convictions, but remand for resentencing or rearticulation of a substantial and compelling reason for departing from the sentencing guidelines. We do not retain jurisdiction.

/s/ Donald S. Owens  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Riordan