

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROBERT EDWARD SHERMAN,

Defendant-Appellee.

UNPUBLISHED
January 31, 2013

No. 305935
Oakland Circuit Court
LC No. 2010-231375-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RICHARD HOWARD WATKINS,

Defendant-Appellee.

No. 306661
Oakland Circuit Court
LC No. 2011-237200-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

AHADRI KORRON YORK,

Defendant-Appellee.

No. 306667
Oakland Circuit Court
LC No. 2011-236220-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOHN HOWARD HAMILTON,

Defendant-Appellee.

No. 306920

Oakland Circuit Court

LC No. 2011-237019-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RICHARD LENTER MACKIE,

Defendant-Appellee.

No. 306923

Oakland Circuit Court

LC No. 2011-237010-FH

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and BOONSTRA, JJ.

PER CURIAM.

In these consolidated appeals, the prosecution appeals by leave granted the judgments of sentence ordering the placement of these five defendants into the Oakland County Sheriff's Work Release Tether Program for their convictions of operating a motor vehicle while intoxicated, MCL 257.625(1), third offense, MCL 257.625(9)(c)(ii), in lieu of imprisonment. We reverse and remand for resentencing.

On appeal, the prosecutor argues that MCL 257.625(9)(c)(ii) mandated that these five habitual offenders be imprisoned in the county jail for not less than 30 days. Instead these defendants were placed in the Oakland County Sheriff's nontraditional work release tether program which allowed these defendants to return home after work, not the county jail, contrary to the clear mandate of MCL 257.625(9)(c)(ii). We agree.

This Court reviews de novo questions of statutory interpretation. *People v Flick*, 487 Mich 1, 8-9; 790 NW2d 295 (2010). A trial court's imposition of sentence is typically reviewed for an abuse of discretion. *People v Underwood*, 278 Mich App 334, 337; 750 NW2d 612 (2008). However, when there is clear statutory direction regarding sentencing, sentencing is not a matter of the trial court's discretion, and failure to comply with a legislative mandate requires reversal. *People v Pennebaker*, __ Mich App __; __ NW2d __ (Docket No. 304708, issued September 13, 2012), slip op at 2.

In *Pennebaker*, this Court recently considered the issue whether a sentence to Oakland County’s electronic monitoring work-release program satisfied a statutorily mandated sentence of incarceration and held that it did not. In that case, the defendant pleaded guilty to operating a motor vehicle while intoxicated, second offense, MCL 257.625(7)(a)(ii), and the defendant’s sentence included 30 days in that work-release program. *Pennebaker*, slip op at 1. On appeal, the prosecution argued that the sentence violated MCL 257.625(7)(a)(ii)(B) which mandated “imprisonment in the county jail for not less than 30 days.” This Court agreed, holding that, by the plain language of the statute, “the trial judge did not have discretion to sentence defendant to less than 30 days in jail.” *Id.* at 2, 3. This Court noted that “[t]he placement of an electronic monitoring device on defendant is not ‘imprisonment in the county jail’ as required by the statute.” *Id.*, citing and quoting *People v Britt*, 202 Mich App 714, 717; 509 NW2d 914 (1993), *People v Reynolds*, 195 Mich App 182, 184; 489 NW2d 128 (1992), and *People v Smith*, 195 Mich App 147, 152; 489 NW2d 135 (1992). And “an at-home electronic monitoring program is also not equivalent to traditional work release programs.” *Pennebaker*, slip op at 3.

As in the *Pennebaker* case, here MCL 257.625(9)(c) provides that, if the defendant is convicted of violating MCL 257.625(1) and has two or more prior convictions, the defendant “shall” be sentenced to either of the following:

(i) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

Thus, at minimum, these five defendants were required to be sentenced to “imprisonment in the county jail for not less than 30 days,” in addition to probation and community service. Placement in the Oakland County Sheriff’s in-home electronic monitoring work-release program violated the clear mandate set forth in MCL 257.625(9)(c)(ii). Accordingly, we reverse the trial court’s sentence in each of these cases and remand for resentencing consistent with MCL 257.625(9)(c)(ii).

Reversed and remanded for resentencing. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Mark J. Cavanagh
/s/ Mark T. Boonstra