Court of Appeals, State of Michigan

ORDER

People of MI v John Paul Sattler

Docket No. 322411

LC No. 11-089593-FH

William B. Murphy, C.J.
Presiding Judge

Douglas B. Shapiro

Michael J. Riordan
Judges

The Court orders that, in lieu of granting leave to appeal, we CONSOLIDATE this appeal with the appeal in *People of MI v John Paul Sattler*, Docket No. 314407 and enter a final decision as to both appeals in the opinion entered today. MCR 7.205(E)(2); MCR 7.216(A)(7).

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUL 31 2014

Date

Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 31, 2014
v	No. 314407 Branch Circuit Court
JOHN PAUL SATTLER, Defendant-Appellant.	LC No. 11-099600-FC

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v	No. 322411 Branch Circuit Court
JOHN PAUL SATTLER, Defendant-Appellant.	LC No. 11-089593-FC

Before: MURPHY, C.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

In Docket No. 314407, defendant appeals by leave granted his life sentence for first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(d)(i) (aided or abetted by another in the sexual penetration of a physically helpless victim). In Docket No. 322411, as reflected in the accompanying order, in lieu of granting leave to appeal, we consolidated the appeal with the appeal in Docket No. 314407, and we now enter a final decision with respect to both appeals. In Docket No. 322411, defendant was also sentenced to life imprisonment for a CSC I conviction. We vacate defendant's sentences and remand for resentencing.

Defendant pleaded nolo contendere to one count of CSC I arising out of an incident in which he and his girlfriend hosted a slumber party, provided drugs and alcohol to minors, drugged a 14-year-old female guest, rendering her physically helpless, and then engaged in acts of sexual penetration with the young victim. Multiple charges related to the incident and sexual assault had been filed in lower court docket number 11-099600-FC. In a separate and distinct incident, defendant committed a similar crime against a different teenage girl. Multiple charges

related to that incident and sexual assault formed lower court docket number 11-089593-FC. There, defendant also pleaded nolo contendere to a single count of CSC I, but, originally, no appeal was taken in the case. In docket number 11-099600-FC, the minimum sentence range was 126 to 210 months. In docket number 11-089593-FC, the minimum sentence range was 135 to 225 months. At a sentencing hearing covering both lower court docket numbers, the trial court sentenced defendant to life imprisonment in both cases.

Examination of the applicable sentencing grid, MCL 777.62, which concerns Class A offenses such as CSC I, MCL 777.16y, reveals that a life sentence does not fall within the ambit of the minimum sentence range with respect to both of the CSC convictions, as based on the scoring of the sentencing variables. The sentencing grid for Class A offenses specifically permits for a "life" sentence in some instances where the levels for the offense variables (OVs) and prior record variables (PRVs) are high, e.g., with an OV level of VI and a PRV level of F, the minimum sentence range is 270 to 450 months "or life." MCL 777.62. Here, defendant's PRV and OV levels, with respect to both cases, did not qualify him for a life sentence as part of the applicable minimum sentence ranges. Accordingly, the trial court's life sentences reflected a departure from the guidelines. See *People v Houston*, 473 Mich 399, 410 n 22, 416; 702 NW2d 530 (2005) (majority of our Supreme Court agreed with that part of the dissent which stated that "if the Legislature had intended that a life sentence be an option, it would have so specified, either in the habitual-offender sentencing guidelines statutes or in a separate sentencing grid").[1] As is evident from a review of the sentencing transcript, the trial court, although articulating general reasons for imposing the life sentences, was not even aware that it was departing from the sentencing guidelines, making no reference whatsoever to a departure or the principles applicable to departures. See MCL 769.34(3); *People v Smith*, 482 Mich 292, 299-300; 754 NW2d 284 (2008).[2]

"Under MCL 769.34(3), a minimum sentence that departs from the sentencing guidelines recommendation requires a substantial and compelling reason articulated on the record." *Smith*, 482 Mich at 299. As indicated in the lead opinion in *People v Johnigan*, 265 Mich App 463, 477-478; 696 NW2d 724 (2005), "while the reasons the trial court stated for the sentence

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[1] An upward departure from the guidelines occurred, regardless of the fact that, for purposes of a life sentence, the possibility of parole could be considered after ten years' imprisonment, MCL 791.234(7)(a), which is actually below the low end of the minimum sentence ranges in the cases.

[2] Our conclusion is bolstered by the fact that the court did not comply with MCL 769.34(7), which provides:

> If the trial court imposes on a defendant a minimum sentence that is longer or more severe than the appropriate sentence range, as part of the court's advice of the defendant's rights concerning appeal, the court shall advise the defendant orally and in writing that he or she may appeal the sentence as provided by law on grounds that it is longer or more severe than the appropriate sentence range.

imposed may well constitute substantial and compelling reasons for a departure, the trial court did not identify them as such because the trial court did not recognize that it was imposing a sentence that represented a departure from the sentencing guidelines." In *Smith*, 482 Mich at 304, the Michigan Supreme Court indicated that a sentencing court must articulate substantial and compelling reasons for a departure generally and for the particular departure made, observing:

> Appellate courts are obliged to review the trial court's determination that a substantial and compelling reason exists for departure. Accordingly, the trial court's justification "must be sufficient to allow for effective appellate review." In [*People v Babcock*, 469 Mich 247, 258-259; 666 NW2d 231 (2003)], this Court explained that an appellate court cannot conclude that a particular substantial and compelling reason for departure existed when the trial court failed to articulate that reason. Similarly, if it is unclear why the trial court made a particular departure, an appellate court cannot substitute its own judgment about why the departure was justified. A sentence cannot be upheld when the connection between the reasons given for departure and the extent of the departure is unclear. When departing, the trial court must explain why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been. [Citations omitted.]

Here, the trial court failed to articulate reasons, within the analytical framework of MCL 769.34(3) and *Smith*, for the departure and the extent of the departure. As stated earlier, the record reflects that the trial court did not appreciate or recognize that it was departing from the guidelines range. On remand, the trial court is to impose sentences within the guidelines range or, if it wishes to once again depart from the guidelines, which it is absolutely free to do, it must articulate substantial and compelling reasons consistent with MCL 769.34 and the principles enunciated in *Smith* and other applicable authorities.[3]

[3] Following oral argument in Docket No. 314407, we entered an order holding the appeal in abeyance "to allow defendant's appointed appellate counsel to seek entry of an order from the trial court appointing him as appellate counsel for defendant in the related lower court case of . . . 11-089593-FC, and, presuming such an order is entered, to file a delayed application for leave to appeal on defendant's behalf . . . ." *People v Sattler*, unpublished order of the Court of Appeals, entered June 11, 2014 (Docket No. 314407). Subsequently, the trial court denied a petition by appellate counsel to be appointed counsel in the case that had not been appealed. In its order denying the petition, the trial court noted that defendant signed a receipt of notice of appeal rights relative to lower court docket number 11-089593-FC, but he failed to sign a request for appointment of appellate counsel. A single SCAO form attached to the trial court's order contains standard language regarding appellate rights and requests, revealing defendant's signed acknowledgment that he received notice of his appellate rights, but with no signature on that portion of the form concerning a request for appointment of counsel. The trial court's order denying the appointment petition also referenced and attached a letter dated September 19, 2012,

Defendant's sentences are vacated, and the cases are remanded for resentencing. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan

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from a judicial clerk in the Branch Circuit Court to defendant's appellate counsel, which provided:

> I have enclosed a copy of the Judgment of Sentence on another case that Mr. Sattler was sentenced on at the same time in our court. I only do this because: Mr. Sattler has only filed a Request for Counsel and Notice of right to appellate review on one of the two files. I am not sure if his intent was to file for both or not, but thought that I would bring this to your attention.

Appellate counsel apparently did not communicate the information in the judicial clerk's letter to defendant, given that appellate counsel now asserts that he never received the letter. Appellate counsel has already been sanctioned once by this Court for filing an untimely delayed application for leave in Docket No. 314407, and in that application, which was granted partly on the basis of "ineffective assistance of [appellate] counsel," counsel referenced defendant as having been sentenced on "two counts" of CSC I, seemingly oblivious of the fact that the two counts were in separate cases. *People v Sattler*, unpublished order of the Court of Appeals, entered February 5, 2013 (Docket No. 314407). We find it difficult to conceive that defendant himself made an informed decision not to seek an appeal in docket number 11-089593-FC, as such a decision would be nonsensical under the circumstances. Nevertheless, defendant, through appellate counsel (privately and not by appointment), then filed an application for leave to appeal in regard to lower court docket number 11-089593-FC (COA Docket No. 322411) and the trial court's denial to appoint appellate counsel, as well as in regard to the life sentence imposed by the court in that case. In the accompanying order, we ordered the consolidation of the two appeals for a final decision in this opinion. We now reverse the trial court's order denying the appointment of appellate counsel in lower court docket number 11-089593-FC, formally appoint counsel as appellate counsel for defendant, and, as indicated, vacate the life sentence for the reasons discussed in this opinion.