

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN PAUL WILSON,

Defendant-Appellant.

UNPUBLISHED

September 18, 2007

No. 272607

Kent Circuit Court

LC No. 01-009065-FH

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted from the sentence of 40 to 60 months in prison imposed on his conviction of third-degree home invasion, MCL 750.110a(4), following his plea of guilty to the charge of probation violation. We dismiss this appeal as moot.

Defendant pleaded guilty to third-degree home invasion. The trial court sentenced defendant to serve a term of 36 months' probation, to pay costs and fees, to attend counseling, and to have no contact with the victim.

On May 9, 2002, defendant pleaded guilty to violating his probation. The sentencing guidelines recommended a minimum term range of zero to 11 months.¹ The trial court found that defendant had failed on probation, and showed a tendency toward violent behavior from which society needed to be protected. The trial court sentenced defendant to 40 to 60 months in prison, with credit for 75 days served.

¹ Under the statutory sentencing guidelines, if the upper limit of the recommended minimum sentence range is 18 months or less, the trial court must impose an intermediate sanction unless it states on the record that a substantial and compelling reason exists to commit the defendant 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 guidelines range or 12 months, whichever is less. MCL 769.34(4)(a). An intermediate sanction does not include a prison term. MCL 769.31(b); *People v Stauffer*, 465 Mich 633, 635; 640 NW2d 869 (2002).

Defendant did not seek appointment of appellate counsel until August 2005. The trial court appointed appellate counsel, and on August 22, 2006, defendant filed a delayed application for leave to appeal the sentence imposed on May 9, 2002. This Court granted the application.

The statutory sentencing guidelines apply to a sentence imposed after a probation violation. *People v Hendrick*, 472 Mich 555, 560; 697 NW2d 511 (2005). A trial court may depart from the established guidelines if it has a substantial and compelling reason to do so, and clearly articulates that reason on the record. MCL 769.34(3). A substantial and compelling reason for departing from the guidelines must be objective and verifiable, must irresistibly attract the attention of the court, and must be of considerable worth in deciding the length of the sentence. A substantial and compelling reason articulated by a trial court to merit a departure from the sentencing guidelines must justify the particular departure at issue. *People v Babcock*, 469 Mich 247, 257-261; 666 NW2d 231 (2003).

We dismiss defendant's appeal as moot. "An issue is moot when an event occurs that renders it impossible for the reviewing court to fashion a remedy to the controversy." *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004). The Michigan Offender Tracking Information Service (OTIS) indicates that defendant served his entire sentence, and was discharged on February 22, 2007. See [Offender Tracking Information System \(OTIS\) - Offender Profile](#). We cannot fashion a remedy under the circumstances; therefore, the issue raised in this appeal is moot. See *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Dismissed as moot.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto