

Syllabus

Chief Justice:
Maura D. Corrigan

Justices:
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman

This syllabus was prepared by the Reporter of Decisions.

Reporter of Decisions
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PEOPLE v CLAYPOOL

Docket No. 122696. Argued March 9, 2004 (Calendar No. 4). Decided July 22, 2004.

Deon L. Claypool pleaded guilty of numerous crimes in the Oakland Circuit Court, Denise Karen Langford-Morris, J., including several counts relating to selling cocaine in a series of small amounts and one later and larger amount, all sales being to a police officer. The court departed downward from the statutory minimum prison sentence of ten years for several reasons, including that the defendant had been subjected to sentencing escalation with the serially increasing amounts of cocaine purchased by the police officer, thereby increasing the defendant's ultimate sentence. The Court of Appeals, FITZGERALD, P.J., and BANDSTRA and GAGE, JJ., in an unpublished opinion per curiam, affirmed the appropriateness of the trial court departing downward from the statutory minimum sentence in part on the basis of the police officer escalating the seriousness of the offense, but noted that not all the reasons that the trial court articulated for the departure warranted a downward departure, the defendant's employment history being one (Docket No. 238984). The prosecution appealed.

In separate opinions, a majority of the Supreme Court *held*:

A downward departure at sentencing cannot be based solely on police conduct that forms the basis for the doctrines of sentencing manipulation, sentencing entrapment, or sentencing escalation.

If it can objectively and verifiably be shown that police conduct or some other precipitating cause altered a defendant's intent, that altered intent can be considered by the sentencing judge as a ground for a downward sentence departure.

The recent United States Supreme Court decision, *Blakely v Washington*, 542 US ____; 124 S Ct ____; ____ L Ed 2d ____ (2004), which concerns the right to have a jury trial on any fact that increases the penalty for a crime beyond the prescribed statutory maximum penalty, does not affect scoring systems that establish recommended minimum sentences, such as the system in Michigan.

The decision of the Court of Appeals is vacated in part and the case is remanded for resentencing or rearticulation of the trial court's reasons for departure from the statutory minimum sentence.

Justice TAYLOR, joined by Justice MARKMAN, stated that if the defendant's intent is altered by police conduct or some other precipitating factor, i.e., an intent-altering factor, and that can be shown in a manner that satisfies the requirements for a sentencing departure as

outlined in *People v Babcock*, 469 Mich 247 (2003), it is appropriate for a court to consider that factor in making a departure.

The focus at sentencing is on the specific criminal being sentenced and on the specific offense for which the criminal is being sentenced. If the defendant's intent to commit the crime was altered by some circumstance, including police conduct, and that can be shown in a manner that satisfies the requirements for a sentencing departure as outlined in *Babcock*, it is appropriate for a court to consider that altered intent in departing from the sentencing guidelines range or the mandatory sentence.

Where a trial court articulates multiple reasons for departure from a statutory minimum sentence or from a statutory sentencing guidelines range, if any of the reasons for the departure are not substantial and compelling and if the appellate court cannot determine if the sentence departure is sustainable without the offending factors, a remand for resentencing or rearticulation on the record is appropriate. *Babcock, supra*.

In this case, the trial court did depart downward from the statutory minimum sentence and so must articulate reasons for this downward departure from the mandatory minimum.

Blakely v Washington concerns the Washington state determinate sentencing system, which allows a trial judge to elevate the maximum sentence permitted by law based on facts not found by the jury, but by the judge. Michigan, in contrast, has an indeterminate sentencing system in which only the minimum sentence is established by the judge, while the maximum sentence is set by law and is not to be exceeded.

Chief Justice CORRIGAN, concurring in part and dissenting in part, agreed with the result reached by the majority, but disagreed with its analysis. She stated that any sentencing departure that endorses an inherently subjective factor such as the defendant's intent cannot satisfy the Legislature's requirement that any sentencing departures be based on objective and verifiable factors. The concept of sentencing entrapment or escalation is at odds with the legislatively mandated sentencing scheme and has no valid legal foundation. Although she agreed with the majority that the decision in *Blakely v Washington* does not invalidate Michigan's indeterminate sentencing scheme as a whole, she noted that the majority's sweeping language regarding judicial powers to effect departures (not limited to downward departures) appears to conflict with principles set out in *Blakely*.

Justice CAVANAGH, concurring in part and dissenting in part, agreed that a judge may consider whatever individualized factors the judge believes are relevant and tended to agree with the ultimate rationale of the majority. He also agreed with the determination of the majority that *Blakely v Washington* does not appear to affect scoring systems that establish recommended minimum sentences, such as the system in Michigan. He would, however, affirm the decision of the Court of Appeals that determined that the departure for sentencing escalation was based on substantial and compelling reasons that were objective and verifiable, instead of vacating the decision of the Court of Appeals and remanding the case to the trial court for resentencing or rearticulation of the reasons for departure from the sentencing guidelines.

Justice WEAVER, dissenting in part and concurring in part, stated that all relevant factors, including police conduct, should be considered in determining whether there is a substantial and compelling reason to depart from the sentencing guidelines ranges. Because the trial court sentence was within a principled range of outcomes, the court did not abuse its discretion in departing from the guidelines, and the Court of Appeals decision affirming the defendant's sentence should be affirmed. She concurred with the conclusion of the majority that the decision in *Blakely v Washington* does not affect Michigan's scoring system, which establishes the recommended minimum sentence.

Justice YOUNG, joined by Chief Justice CORRIGAN, concurring in part and dissenting in part, concurred with the decision of the majority to remand for resentencing but dissented from its analysis and would not permit the trial court, on remand, to consider the defendant's intent as a proper sentencing factor, because intent is a subjective factor and it therefore may not properly be considered under *People v Babcock*. He also concurred with the statement by the majority that Michigan's sentencing system is unaffected by the holding in *Blakely v Washington*.

Justice KELLY, concurring in part and dissenting in part, stated that she agrees with Justice CAVANAGH's concurring opinion but does not agree that the Court should take a position on the application of *Blakely v Washington* to Michigan's sentencing scheme in this case, where the issue was neither raised nor briefed.