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Felony Sentencing Guidelines

By 46th Circuit Court Judge Janet M. Allen

Adults convicted of felony crimes are sentenced by a judge to one of two primary types of sentences. The first is a community sentence, which includes probation, fines, costs, restitution and or jail of up to one year.

The second type of sentence is a prison sentence where the judge sentences the defendant to a minimum length of years in prison with the maximum amount of years already being established by the Legislature through a statute. In a prison sentence, the defendant must serve the minimum term as set by the judge after which time the prisoner's release from prison then becomes the decision of the Michigan parole Board.

The prisoner can be released from prison under the supervision of the Parole Board anytime after the prisoner has served his/her minimum term. If granted parole, the prisoner remains under the jurisdiction of the Parole Board and can at any time be returned to prison to finish serving the balance of the maximum term.

An example is a prison sentence of 5 years to 10 years. The judge's role in this case would have been the imposition of the 5 years. The sentencing practices of judges are limited by mandated sentencing guidelines and other "rules" the judge must follow. These rules and guidelines are established by Michigan Legislature as laws (statutes) and failure to follow the mandates can result in the cases being remanded for re-sentencing by the Court of Appeals.

History of sentencing guidelines

Since 1902, the Michigan State Constitution authorized the Michigan Legislature to establish indeterminate sentences as punishment for criminal offenses. These are prison sentences where the judge sets the sentence on the minimum term with the maximum term in years set by the statute.

The Michigan Legislature sets the maximum sentence for felony offenses in 8 different classes depending on the severity of the offense ranging from life in prison to county jail, a fine, or no jail, on the low end.

As to minimum sentences, in 1983, the Michigan Supreme Court distributed optional guidelines to establish standardized sentences for similar type of offenses and offenders.

The Legislature then established mandatory statutory sentencing guidelines for felonies committed after January 1, 1999.

These mandatory sentencing guidelines divide over 700 crimes into 6 crime groups as follows:

1. Crimes against persons.
2. Crimes against property.
3. Crimes involving controlled substances.
4. Crimes against the public order.
5. Crimes against the public trust.
6. Crimes against public safety.

These are divided into 8 crime classes establishing more severe crimes to the less severe crimes ranging from a maximum of life in prison to county jail time.

A trial court judge **must** sentence a person convicted of a felony to a minimum sentence within the minimum guideline range established by the Legislature **unless** the court states substantial and compelling reasons to exceed that range. Those reasons cannot be based on any of the numerous and comprehensive list of factors already factored into the scoring of the sentences established by the Legislature. When a trial judge incorrectly exceeds the guidelines, the Court of Appeals must overturn the sentence and generally will return the case for re-sentencing.

The objective of a felony sentence.

The Michigan Supreme Court has indicated that judges must tailor a penalty that is appropriate to the seriousness of the offense and the criminal history of the offender. The “framework” of an appropriate sentence consists of 4 basic considerations:

1. The likelihood that the offender could be reformed.
2. The need to protect society.
3. The penalty appropriate to the offender’s conduct and,
4. The goal of deterring others from similar conduct.

Plea bargains, Jury Verdicts, Sentence Bargains and Sentencing Guidelines

Because the Legislature's Mandatory Sentencing Guidelines set important limitations and parameters on the range of incarceration legally available to the judge, it is very important that the public understand that the Guideline Ranges vary greatly by the final conviction offense, not the original charges. The final conviction offense is determined by: (1) a standard plea bargain, (2) a jury verdict, or, less frequently, (3) a plea and sentence bargain.

There are several reasons why a prosecutor would offer a plea bargain; such as how strong or weak the evidence is against a defendant, cost considerations, among others.

The courts are required to accept plea bargains and jury verdicts. As to the third method, the courts can accept or reject sentence bargains. Such bargains are not preferred by the courts because they are proposed by the lawyers at the plea hearing *before* the court knows all the facts and circumstances in the case, and then they often cause undue delay if they are rejected prior to sentencing *after* the court learns the

background of the case.

In any given case, the allowable sentence range available to the judge is primarily governed by two main factors: (1) the highest final conviction offense - whether that conviction is the result of a plea bargain or a jury verdict, and (2) the prior record and number of current convictions (PRV) of the offender. These two main factors are then applied to the Guideline Grid to establish the range of a lawful sentence.

To present a hypothetical example, if the originally charged highest offense of Home Invasion First Degree ends up being the conviction offense, then the likely guideline range, for a first offender with no other contemporaneous convictions, would be a minimum sentence range of 0 to 18 months. If that same offender's highest conviction offense is a reduced charge of Home Invasion Third Degree, then the minimum range is likely to be 0 to 3 months. You can see from this hypothetical example the importance that the final conviction offense and the prior record of the offender have on the sentencing ranges and options available.

Concurrent and Consecutive Maximum Sentences

Offenders convicted of more than one crime arising out of the same criminal event may fact differed maximum sentences. For example, a person entering another's home without permission and stealing something could be convicted of Home Invasion 1st Degree which has a 20 year maximum sentence and Larceny from a Building which has a 4 year maximum. The sentences are generally served at the same time or concurrent to one another. The maximum sentences are not added together for a new maximum of 14 years. More rarely, one sentence is served after the other sentence is completed or consecutively to one another. The most common example of consecutive sentences are when a new crime was committed when the person was imprisoned or on parole.

The sentencing process.

Following conviction, a pre-sentence investigation report is prepared. This is prepared by a probation officer and includes the following information:

1. A description of the defendant's prior criminal convictions and juvenile adjudications.
2. A complete description of the offense and surrounding circumstances.
3. A brief description of the defendant's vocational background and work history including military record and present employment status.
4. A brief social history of the defendant including marital status, financial status, length of residence in the community, educational background and other pertinent data.
5. The defendant's medical history, substance abuse history, if any, and, if indicated, a current psychological or psychiatric report.
6. Information concerning the financial, social, psychological or physical

harm suffered by any victim of the offense including restitution to the victim.

7. Any statement the defendant wishes to make.
8. A written victim impact statement made by the victim.
9. A statement from the prosecuting attorney regarding whether consecutive sentencing is mandatory or discretionary.
10. An evaluation of and prognosis for the offender's community adjustment and a written recommendation for specific disposition, i.e., prison time, jail time, probation, conditions of probation, payment of restitution to the victim and payment of fines and costs.

This pre-sentence investigation report is a tool that provides the sentencing judge with information important to his or her ability to fashion a sentence appropriate to the criminal and to the circumstances under which the crime is committed.

There are points scored for 7 prior record variables dealing with the defendant's prior criminal history and there are 20 offense variables that consider the offense crime group, elements of the offense, and any aggravating or mitigating factors relevant to the offense.

Points are assigned for the prior record variables (PRV's) and offense variables (OV's), and a score is generated which eventually determines the minimum sentence guideline range for a minimum sentence.

By the time of sentencing, the judge possesses a comprehensive report outlining all the above information. The sentencing hearing is a critical stage in the proceeding. The defendant has a right to be represented by counsel. If he or she had not previously been appointed counsel, one would be appointed in advance of sentencing. All parties, the prosecutor, defendant and defense attorney must have had a reasonable opportunity to read and discuss the pre-sentence investigation report.

At sentencing, the prosecutor and defense attorney have the opportunity to challenge any information in the report for which the judge must make a ruling. They also have the right to challenge any of the prior record variables or offense variables scoring which would affect the ultimate sentence range for a minimum sentence. The court is under a duty to correct the accuracy or relevancy of any information in the report and to rule on any challenges to the scoring.

The victim, the prosecutor, the defendant and the defense attorney have a right to "allocute" which is to advise the court of the circumstances they believe the court should consider in imposing sentence.

The crime victim has a constitutional right to make a statement to the court at sentencing.

Depending upon the appropriate scoring guidelines, a minimum sentence may include the following:

1. Prison time.
2. County jail time. (Note: the Sheriff has the sole discretion to assign prisoners to the Otsego County Work Camp unless a judge specifically objects.)
3. Community sanctions including a period of probation with or without jail

time.

4. Other terms and conditions of probation appropriate to the crime.
5. Ordering the defendant to make full restitution to the victim. Note: even if the conviction offense is reduced by plea bargain or jury verdict, the victim remains entitled to full restitution.
5. Ordering the defendant to pay fines, court costs and attorney fees.

The sentencing process is comprehensive, involves many participants and is heavily regulated by the Michigan Legislature.

All citizens are reminded that courts are open to the public and the public is welcome to attend. For more information regarding scheduling, go to the court's web site at www.circuit46.org.

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