

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON DONALD KROEPEL,

Defendant-Appellant.

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UNPUBLISHED

June 3, 1997

No. 182382

Cass Circuit Court

LC No. 94-8111 FC

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

Following a jury trial in Cass Circuit Court, defendant was convicted of assault with intent to commit great bodily harm less than murder. After the trial court calculated the sentence guideline range as two to five years on the minimum, it imposed an upward departure sentence of six to ten years imprisonment, noting that, having presided at trial, it considered the brutality of the crime warranted a more severe sanction. Defendant appeals by right.

Defendant contends that “excessive brutality” was already adequately accounted for by a 50-point score under OV 2 for purposes of calculating the sentence guidelines, and that further upward departure based on such considerations was erroneous. First, we note that guideline scoring issues of this type no longer present cognizable claims for appellate relief absent an independent showing that the sentence imposed is disproportionate to the offense and the offender. *People v Mitchell*, 454 Mich 145; \_\_\_ NW2d \_\_\_ (1997). In any event, when a defendant’s actions are so egregious that the guidelines calculations do not reflect their severity, an upward departure from the guidelines range was permissible even prior to *Mitchell*. *People v Granderson*, 212 Mich App 673; 538 NW2d 471 (1995).

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald