

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES HART,

Defendant-Appellant.

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UNPUBLISHED

May 18, 1999

No. 201669

Recorder's Court

LC No. 96-001201

Before: Markey, P.J., and Holbrook, Jr., and Neff, JJ.

PER CURIAM.

Defendant, a juvenile, pleaded guilty as an adult to first-degree criminal sexual conduct, MCL 750.520b(1)(e); MSA 28.788(2)(1)(e), and armed robbery, MCL 750.529; MSA 28.797. After conducting a juvenile sentencing hearing pursuant to MCL 769.1(3); MSA 28.1072(3) and MCR 6.931(A), the trial court determined that defendant should be sentenced as an adult and sentenced him to two concurrent terms of fifty to seventy-five years each. Defendant appeals by delayed leave granted. We affirm.

The prosecutor has the burden of proving by a preponderance of the evidence that the best interests of the juvenile and the public would be better served by sentencing the juvenile as an adult offender. *People v Cheeks*, 216 Mich App 470, 475; 549 NW2d 584 (1996); MCR 6.931(E)(2). At the time defendant was sentenced, both the statute and court rule required the court to consider six criteria in determining whether to sentence defendant as a juvenile or adult offender. See MCL 769.1(3); MSA 28.1072(3); MCR 6.931(E)(3).

Review of the trial court's decision is a bifurcated one. *Cheeks, supra* at 474. The trial court's factual findings supporting its determination regarding each factor are reviewed under the clearly erroneous standard, and the court's ultimate decision whether to sentence defendant as a juvenile or as an adult is reviewed for an abuse of discretion. *People v Launsbury*, 217 Mich App 358, 362; 551 NW2d 460 (1996).

It is clear from the record that the trial court was aware of, and addressed, each of the relevant statutory factors. It found that defendant had a prior record, that his physical and mental maturity were

consistent with his age, and that he lived in a poorly maintained home in which he was not properly supervised. It found that this was an extremely serious offense that appeared to be part of a repetitive pattern of offenses. It also found that defendant was not amenable to treatment in a juvenile facility, as indicated in both psychological evaluations, and that he was likely to present a danger to the public if released at age twenty-one. These findings are not clearly erroneous and, cumulatively considered, showed that it was in the best interests of the public welfare and the protection of public security that defendant be sentenced as an adult. Thus, the trial court did not abuse its discretion in its determination to sentence defendant as an adult.

As to the sentence imposed, a sentencing court abuses its discretion when it violates the principle of proportionality. A sentence must be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). “Departures from the sentencing guidelines are suspect and subject to careful scrutiny on appeal.” *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994). However, the key test for proportionality is not whether the sentence departs from, or adheres to, the recommended range under the sentencing guidelines, but whether it reflects the seriousness of the matter. *Milbourn, supra* at 661; *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). The court may depart from the guidelines where there are legitimate factors not considered by the guidelines, where there are factors considered but inadequately weighed by the guidelines, or where the recommended sentencing range is disproportionate to the seriousness of the offense. *Milbourn, supra* at 657, 660-661; *Coulter, supra* at 456. A sentencing court is allowed to consider the facts underlying uncharged offenses, pending charges and acquittals. *People v Ewing (After Remand)*, 435 Mich 443, 446 (opinion by Brickley, J.), 473 (opinion by Boyle, J.); 458 NW2d 880 (1990). A defendant’s lack of remorse and low potential for rehabilitation are also legitimate factors to be considered in passing sentence. *Houston, supra* at 323.

In the instant case, the sentencing guidelines recommended a minimum sentence range of ten to twenty-five years. As its reasons for departing from the guidelines, the trial court cited (1) defendant’s classification as a sociopath who preys on vulnerable victims, (2) defendant’s repetitive pattern of assaultive behavior, (3) defendant’s lack of amenability to rehabilitation, and (4) a psychologist’s opinion that “advancing age” and treatment might decrease the danger defendant posed to society. These are all factors not taken into consideration by the guidelines and thus justified an upward departure from the guidelines.

The Court’s departure, while extensive, was warranted by the circumstances of the offense, in which defendant needlessly brutalized the victim, and by defendant’s own circumstances. Defendant’s behavior in connection with this, coupled with his prior assaultive behavior toward vulnerable victims, demonstrated that he is a danger to society. The court’s sentence adequately reflects the seriousness of the offense. *Houston, supra*.

We affirm.

/s/ Jane E. Markey

/s/ Donald E. Holbrook, Jr.

/s/ Janet T. Neff