

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HARRY OVERMAN, JR.,

Defendant-Appellant.

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UNPUBLISHED

June 29, 1999

No. 209507

Wayne Circuit Court

LC No. 97-005919

Before: Doctoroff, P.J., and Markman and J.B. Sullivan\*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, and was sentenced to five to fifteen years' imprisonment. He appeals as of right. We affirm, but remand for completion of the Sentencing Information Report (SIR) departure form.

Defendant's conviction arose out of the after-hours robbery of a restaurant, by defendant and two others, who were all armed. The three waited until closing, entered through a back door, ordered the employees to the floor and made off with \$4,000 in cash. On appeal, defendant raises only sentencing issues.

Defendant first claims that his sentence is invalid because the trial court failed to record on the SIR its reasons for departing from the sentencing guidelines' recommended minimum sentence range of twelve to forty-eight months in prison and, therefore, failed to sufficiently explain on the record its reasons for departure. We agree that the trial court failed to state its reasons for departure on the SIR and, therefore, we remand for the ministerial task of completing the SIR guideline departure form. *People v Bunn*, 166 Mich App 584, 585; 421 NW2d 247 (1988).

We do not agree, however, that the court's failure to state the reasons for departure on the SIR renders defendant's sentence invalid or disproportionate. Contrary to defendant's claim, the trial court did state its reasons for departure on the record. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). The record indicates that the trial court was aware of the guidelines, that the victims reasonably thought defendant was armed with a gun, and that defendant had a pending charge on yet

\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

another armed robbery offense. *People v Bryars*, 168 Mich App 523, 526-527; 425 NW2d 125 (1988).

We also disagree with defendant's claim that his sentence violates the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Defendant, an eighteen year-old male, was involved in a serious crime, which carries a statutory maximum penalty of life imprisonment, and another case for a similar offense was pending at the time of sentencing. The trial court admittedly gave defendant the "benefit of the doubt" on an additional charge of felony-firearm, but found that he reasonably led the victims to believe that he was armed by displaying part of a shotgun. Defendant's minimum sentence exceeded the guidelines' recommendation by only twelve months. Defendant's sentence does not violate the principle of proportionality.

Defendant's conviction and sentence are affirmed. Remanded for completion of the SIR guideline departure form. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ Stephen J. Markman

/s/ Joseph B. Sullivan