

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS EDWARD ROARK,

Defendant-Appellant.

UNPUBLISHED

April 21, 2000

No. 216977

Ingham Circuit Court

LC No. 98-073591-FH

Before: Collins, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right his guilty plea based conviction for uttering and publishing, MCL 750.249; MSA 28.446. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The charge against defendant was based on his presentation of false documents resulting in the improper issuance of a Michigan medical license. At sentencing, the guidelines range was computed at 12 to 24 months. The trial court exceeded the guidelines range, and sentenced defendant to six to fourteen years' imprisonment.

Defendant argues that the court erred in scoring guidelines factor OV 25. The judicially created guidelines do not have the force of law. *People v Mitchell*, 454 Mich 145, 175; 560 NW2d 600 (1997). A claim of a miscalculated variable is not a claim of legal error, and does not state a cognizable claim for relief. *Id.*

Defendant also argues that his sentence is disproportionate where it greatly exceeded the sentencing guidelines range. A sentence is reviewed on appeal for abuse of discretion, which will be found where the sentence imposed does not reasonably reflect the seriousness of the circumstances surrounding the offense or the offender. *People v Castillo*, 230 Mich App 442, 447; 584 NW2d 606 (1998). A court departing from the sentencing guidelines must place its reasons for doing so on the record at the time of sentencing. *People v Fleming*, 428 Mich 408; 410 NW2d 266 (1987). The crucial test for proportionality is not whether the sentence departs from the guidelines, but whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508

(1995). A sentence outside the range that is imposed without reference to legitimate factors not adequately considered by the guidelines may be disproportionate. *Id.*

The trial court enumerated four factors which caused it to depart from the guidelines range. First, unlike the typical fraud crime, this case involved more than just financial harm. Second, defendant performed more than 200 surgeries, involving the highest degree of personal invasion. Third, defendant's actions exposed several hospitals to medical malpractice liability. Finally, defendant continued to misrepresent his medical education. These factors are not embodied in the guidelines, and the trial court did not abuse its discretion in relying on these factors in concluding that a substantial departure from the guidelines range was justified given the particular nature of defendant's crime.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski