

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO ROSHAWN BOSTON,

Defendant-Appellant.

UNPUBLISHED
December 8, 2000

No. 217600
Wayne Circuit Court
LC No. 94-004573

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

MEMORANDUM.

Defendant appeals as of right his 30 to 75 year sentences for armed robbery, MCL 750.529; MSA 28.797, and second-degree murder, MCL 750.317; MSA 28.549, entered after a remand for resentencing. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After his jury conviction, defendant was originally sentenced to 50 to 75 years' imprisonment on each count. This Court affirmed defendant's conviction, but remanded for resentencing, indicating that it appeared that the trial court improperly considered defendant's refusal to admit guilt in passing sentence. The Court found that the trial court did not make an independent finding that defendant was guilty to felony murder, and that the sentence was not intended to send a message to the community. *People v Boston*, unpublished opinion of the Court of Appeals, (Docket No. 183441, issued 06/20/97).

On appeal, defendant argues that the court failed to cite sufficient reasons for departing from the sentencing guidelines range of 144 to 300 months or life, and that his sentence is disproportionate. We disagree.

A sentence must be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The sentencing guidelines establish a useful barometer to measure the proportionality of a sentence. *Id.* If the sentence falls outside the guidelines range, there must be a specific explanation. *People v Fleming*, 428 Mich 408, 415; 410 NW2d 266 (1987). In the absence of factors not

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

adequately reflected in the guidelines, a departure should alert the appellate court to the possibility that the trial court violated the principle of proportionality and abused its sentencing discretion. *People v Houston*, 448 Mich 312, 321; 532 NW2d 508 (1995); *People v Kowalski*, 236 Mich App 470; 601 NW2d 122 (1999).

The trial court adequately stated its reasons for the departure. The trial court properly found that the evidence would support a conviction for felony murder. The circumstances of the crime are sufficiently serious to merit a departure from the guidelines. Where defendant also had a poor prison record, the departure is supported by the record. The trial court did not abuse its sentencing discretion. *Milbourn, supra*.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber