

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NTUKU ALIAKBAR,

Defendant-Appellant.

UNPUBLISHED

October 2, 2001

No. 228262

Wayne Circuit Court

LC No. 99-004574

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for arson of a dwelling house. MCL 750.72. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The sole issue on appeal concerns defendant's sentence. Defendant was sentenced under the statutory sentencing guidelines. MCL 769.34. The trial court deviated from the fifteen to twenty-five month guideline range, and sentenced defendant to 7½ to 20 years' imprisonment. The court rejected the guidelines recommendation because it did not reflect the gravity of the offense, or the fear and danger that the family experienced based on the repeated attacks by defendant.

Under most circumstances, the guidelines statute requires trial courts to impose a minimum sentence within the appropriate sentence range. *People v Babcock*, 244 Mich App 64, 72; 624 NW2d 479 (2000). The statute permits trial courts to depart from the guidelines only where there is a substantial and compelling reason to do so. MCL 769.34(3). This Court's review of a sentence outside the guidelines range is limited to whether the trial court had a substantial and compelling reason to depart from the guidelines. MCL 76.34(11); *Babcock*, *supra* at 74.

The existence or nonexistence of a particular factor is a factual determination, which this Court will review for clear error. *People v Fields*, 448 Mich 58, 77; 528 NW2d 176 (1995). The determination that a particular factor is objective and verifiable is reviewed as a matter of law. *Id.* at 78. The trial court's determination that the objective and verifiable factors present in a particular case constitute substantial and compelling reasons to depart from the guidelines is

reviewed for abuse of discretion. *Id.* The principle of proportionality is not incorporated into the sentencing review framework of the statute. *Babcock, supra* at 78.

The trial court did not clearly err in determining that defendant was involved in continuing criminal activities against his family that placed them in fear and danger. Defendant's actions were objective and verifiable. The fact that defendant's actions involved his family is a proper aggravating act to be considered by the court. *Id.* at 79. The reasons justifying departure keenly and irresistibly grab one's attention and the Court recognizes them as being of considerable worth in deciding the length of the sentence. See *Fields, supra* at 67. Where defendant engaged in a continuing pattern of criminal activity against his own family, inciting fear for their lives, the trial court could reasonably conclude that there was a substantial and compelling reason for departing from the fifteen to twenty-five month guideline range.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jessica R. Cooper