

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK STEVEN ROBINSON,

Defendant-Appellant.

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UNPUBLISHED  
November 9, 2001

No. 226300  
Wayne Circuit Court  
LC No. 85-005818

Before: Doctoroff, P.J., and Wilder and Schmucker\*, JJ.

PER CURIAM.

Defendant appeals as of right from the sentences imposed on resentencing for his convictions of two counts of criminal sexual conduct in the first degree (CSC I), MCL 750.520b, and two counts of armed robbery, MCL 750.529. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1986 defendant was convicted by a jury of two counts of CSC I, two counts of armed robbery, and one count of felonious assault, MCL 750.82. The charges arose from an incident in which defendant gained entry to a residence where he was known, sexually assaulted a female, stabbed a male, and stole various items. The trial court sentenced defendant to concurrent terms of forty to eighty years in prison for the convictions of CSC I and armed robbery, and two to four years' for the conviction of felonious assault. In *People v Robinson*, unpublished opinion per curiam of the Court of Appeals, issued May 13, 1987 (Docket No. 92074), this Court reversed the conviction of felonious assault while affirming the remaining convictions.

For reasons that are not clear, the charge of felonious assault was not dismissed by the prosecutor until 1999. Subsequently, the trial court granted defendant's motion for resentencing. At the sentencing hearing the resentencing judge reviewed the facts of the case, defendant's prior record, and defendant's own background. The court concluded that defendant was a danger to society, and that his prospects for rehabilitation were low, and that it saw no reason to impose sentences different from those originally imposed. The resentencing judge imposed concurrent sentences of forty to eighty years' for defendant's convictions of CSC I and armed robbery, with credit for 5,151 days on each sentence.

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

We review a question of law de novo on appeal. *People v Harris*, 224 Mich App 597, 599; 569 NW2d 525 (1997). A sentence must be proportionate to the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). The imposition of a disproportionate sentence constitutes an abuse of discretion. *People v Merriweather*, 447 Mich 799, 806; 527 NW2d 460 (1994).

Defendant argues that he is entitled to a second resentencing because the resentencing judge made no effort to familiarize herself with the facts of the case to enable her to impose proportionate sentences, and because she erroneously concluded that her only duty was to review the original sentences to determine whether they were appropriate. We disagree and affirm defendant's sentences. The record reveals that the resentencing judge was familiar with the essential facts of the case and with defendant's background. Furthermore, we find that the resentencing judge imposed new sentences, and did not simply review the original sentences to determine their appropriateness to defendant's circumstances and those of the offenses. The court obtained an updated presentence report and rescored the guidelines. After considering all pertinent facts, the court concluded that sentences of forty to eighty years' were appropriate. The court articulated on the record the evidence considered and the reasons for the length of the sentences, as required. *People v Rice (On Remand)*, 235 Mich App 429, 445-446; 597 NW2d 843 (1999). These sentences were the same as those originally imposed; however, the record supports a finding that the resentencing judge did not merely review the original sentences, an act not within her purview, *People v Wybrecht*, 222 Mich App 160, 170; 564 NW2d 903 (1997), but acted independently to sentence defendant anew. No error occurred. *Harris, supra*.

Furthermore, we conclude that the sentences imposed on resentencing are proportionate. The minimum terms of forty years' were within the guidelines, and thus are presumptively proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). The evidence showed that defendant committed acts of physical violence on acquaintances, and stole items from them. Defendant had a lengthy prior record, including convictions for criminal sexual conduct, armed robbery, and other assaultive offenses. The sentences are an appropriate response to the seriousness of this matter. *Houston, supra*.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker