

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDALL PATRICK KOBICI,

Defendant-Appellant.

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UNPUBLISHED

November 27, 2001

No. 224718

Macomb Circuit Court

LC No. 98-002651-FC

Before: Saad, P.J., Bandstra, C.J., and Whitbeck, J.

PER CURIAM.

A jury convicted Randall Kobici of manslaughter.<sup>1</sup> The trial court sentenced Kobici to 10 to 15 years' imprisonment and he now appeals as of right. His sole issue on appeal is the proportionality of his sentence. We affirm.

The Principle Of Proportionality

A. Standard Of Review

Kobici asserts that his sentence is disproportionate. We will not reverse a trial court's decision regarding sentencing unless we find an abuse of discretion.<sup>2</sup> An abuse of discretion occurs when a trial court violates the principle of proportionality, which requires that a sentence must be proportionate to the seriousness of the circumstances of the offense and the offender.<sup>3</sup>

B. The Applicable Guidelines

Because Kobici committed his instant offense before January 1, 1999, the judicially created guidelines are applicable here.<sup>4</sup> The guidelines are intended to assist the court in

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<sup>1</sup> MCL 750.321.

<sup>2</sup> *People v Milbourn*, 435 Mich 630, 634-636; 461 NW2d 1 (1990).

<sup>3</sup> *Id.* at 636.

<sup>4</sup> MCL 769.34(1); *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 766 (2000).

assessing the appropriate sentence and to promote statewide consistency in sentencing.<sup>5</sup> However, the guidelines provide a framework and not an absolute determination on which defendants can rely. The sentencing court may deviate from the guidelines range and is required merely to explain its reasons for doing so; a sentencing court is not bound by the guidelines as they are but “a tool to assist the sentencing judge in the exercise of discretion.”<sup>6</sup>

### C. The Trial Court’s Departure

The trial court departed from the guidelines recommendation because it believed that offense variables three, four and seven did not properly account for the specific circumstances which occurred in this case. The trial court’s action was supported by facts of record. Kobici initially attacked the victim with a knife. However, after Kobici inflicted multiple knife wounds, the victim was still not incapacitated. Kobici then beat her to death with a hammer. These were, without question, extraordinarily extreme and brutal circumstances. Because the offense variables do not adequately address such circumstances the trial court was warranted in its departure from the guidelines range.

### D. Kobici’s History

Kobici asserts that the trial court improperly “ignored” his mental history and the prior violent relations between the victim and his family. The first assertion is simply without record support; our review of the record reveals that the trial court specifically considered Kobici’s mental condition. The trial court determined that its most important goal was to protect society from the dangers Kobici presented, even though it stated that Kobici needed “help” and “guidance.” The second assertion lacks merit because whether the victim had assaulted and threatened Kobici’s family on prior occasions is irrelevant to his sentencing. We observe that Kobici never demonstrated at trial that he was acting in self-defense or was specifically provoked by the victim’s actions towards him.

We conclude that Kobici’s sentence was proportional to the circumstances of the offense and offender. We hold that the trial court did not abuse its discretion when it imposed a sentence that departed upward from the sentencing guidelines.

Affirmed.

/s/ Henry William Saad  
/s/ Richard A. Bandstra  
/s/ William C. Whitbeck

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<sup>5</sup> *People v Stone*, 195 Mich App 600, 608; 491 NW2d 628 (1992), citing to *People v Crook*, 162 Mich App 106, 109; 412 NW2d 661 (1987).

<sup>6</sup> *People v Potts*, 436 Mich 295, 303; 461 NW2d 647 (1990).