

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD D. BERRY,

Defendant-Appellant.

UNPUBLISHED

April 9, 2002

No. 227357

Wayne Circuit Court

LC No. 99-011645

Before: Neff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant was charged with three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(f) (sexual penetration through force or coercion). Following a jury trial, defendant was convicted of gross indecency, MCL 750.338. The trial court sentenced defendant to one to five years' imprisonment for the gross indecency conviction, with 186 days credit for time served. Defendant appeals as of right. We affirm.

The following evidence was adduced at trial:¹ During the early morning hours of October 16, 1999, the complainant was walking on a street in the City of Detroit. Defendant grabbed the complainant and beat her head against a streetlight pole. Defendant attempted to force the complainant into his car which was parked on the side of the street next to the streetlight. As defendant pulled her into the car, the complainant struggled to escape. At one point, the complainant was partially inside and partially outside the car, grasping at the grass on the ground. Defendant pulled her back into the car. During the struggle defendant penetrated the complainant orally and vaginally. The complainant ultimately extricated herself from the car. Defendant continued to beat her head into the cement, the side of the car, and the streetlight pole. As the complainant struggled to get away, defendant bit her hand. Defendant forced sexual intercourse with the complainant as he held her wrists to the ground. While this was occurring, the police arrived in response to a call.

Defendant argues on appeal that the trial court erred in departing from the minimum statutory guidelines range of zero to nine months without establishing substantial and compelling

¹ We note that defendant testified at trial and denied the charges, asserting that the sexual relations between himself and the complainant were consensual. On appeal, defendant challenges only his sentence.

reasons for such departure. We disagree. A trial court “may depart from the appropriate sentence range established under the sentencing guidelines . . . if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure.” MCL 769.34(3). *People v Babcock*, 244 Mich App 64, 74; 624 NW2d 479 (2000). The factors relied on by the trial court as constituting substantial and compelling reasons for departure must be objective and verifiable. *Id.* at 75. A trial court’s determination that the objective and verifiable factors present in a particular case constitute substantial and compelling reasons to depart from the statutory minimum sentence shall be reviewed for an abuse of discretion. *Id.* at 75-76.

After reviewing the record in this case, we find no abuse of discretion. In light of the grim facts of this case, departure was appropriate. The trial court’s deviation from the guidelines was a mere three months and the court articulated an adequate basis for a modest departure upward from the guidelines. *Babcock, supra.*

Affirmed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot