

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

KIUNDA JOHN BURRESS,

Defendant-Appellant.

UNPUBLISHED

July 9, 2002

No. 237479

Genesee Circuit Court

LC No. 00-006622-FC

Before: Hood, P.J., and Saad and E. Thomas,* JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted from a sentence of 7½ to 25 years imposed for bank robbery, MCL 750.531. We affirm.

Defendant's sentence exceeded the minimum sentence range recommended under the statutory guidelines. The trial court's factual finding regarding the existence of a reason or factor warranting departure is reviewed on appeal under the clearly erroneous standard. *People v Perry*, 216 Mich App 277, 280; 549 NW2d 42 (1996). Whether a particular factor is, as a matter of law, objective and verifiable is reviewed by this Court as a matter of law. *People v Babcock*, 244 Mich App 64, 76; 624 NW2d 479 (2000). The trial court's holding that objective and verifiable factors present a substantial and compelling reason to depart from the statutory minimum sentence is reviewed for an abuse of discretion. *Id.*

The trial court departed upwards from the guidelines by nineteen months because defendant had a history of stealing cars and failed to benefit from less severe forms of punishment than incarceration for his prior offenses. Defendant's prior juvenile adjudications were accounted for by prior record variables 4 and 5, which accounted for seven of his twenty-seven points. The numerous additional crimes which did not lead to prosecution were not taken into account by the prior record variables. Defendant admitted to having stolen at least fifteen cars in his life. This is an objective verifiable factor and constitutes a substantial and compelling reason for departing from the guidelines range. *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994). Given defendant's recidivism and his failure to conform his conduct to the law through alternatives to incarceration, the trial court did not abuse its discretion in finding that a departure from the guidelines was warranted. We further find that the 7-1/2 year

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

minimum sentence imposed by the trial court is proportionate. *People v Babcock*, __ Mich App __; __ NW2d __ (Docket No. 235518, issued March 19, 2002), slip op. at 3-4.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Edward Thomas