

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID V. BULLOCK,

Defendant-Appellant.

UNPUBLISHED
September 6, 2002

No. 231992
Wayne Circuit Court
LC No. 00-004420

Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of unarmed robbery, MCL 750.530, larceny of a firearm, MCL 750.357b, and felon in possession of a firearm, MCL 750.224f. He was sentenced to prison terms of ten to twenty-two years' for the robbery conviction and three to seven years' for each of the weapons convictions. Defendant appeals his sentences as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that the trial court erred in departing from the legislative guidelines. The trial court's determination 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). The determination that a particular factor is 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 determination 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 court must impose a minimum sentence within the guidelines range unless a departure from the guidelines is permitted. MCL 769.34(2). The court may depart from the guidelines if it "has a substantial and compelling reason for that departure and states on the record the reasons for the departure." MCL 769.34(3). Substantial and compelling reasons will be found "to exist only in exceptional cases." *People v Fields*, 448 Mich 58, 68; 528 NW2d 176 (1995).

The court may depart from the guidelines for nondiscriminatory reasons where there are legitimate factors not considered by the guidelines or where factors considered by the guidelines have been given inadequate or disproportionate weight. MCL 769.34(3)(a), (b); *People v Armstrong*, 247 Mich App 423, 425; 636 NW2d 785 (2001). Only objective factors that are

capable of verification may be used to assess whether there are substantial and compelling reasons to deviate from the minimum sentence range under the guidelines. *Babcock, supra* at 75. In addition, the substantial and compelling factors relied upon by the trial court must justify the particular departure at issue. *People v Hegwood*, 465 Mich 432, 437 n 10; 636 NW2d 127 (2001).

The guidelines established a minimum sentence range of thirty-six to eighty-eight months' for the robbery conviction and twelve to thirty months' for each of the other two convictions. The court exceeded the guidelines because defendant had four prior convictions similar in nature to the robbery conviction, he was on parole when this offense occurred, and he had absconded from parole three times within eighteen months.

The fact that defendant had prior convictions of a similar nature was taken into account by prior record variable (PRV) 1 and PRV 2, which consider the number and classification of the prior offenses, MCL 777.51; MCL 777.52, and by the increase of the upper limit of the guidelines for defendant's habitual offender status, MCL 777.21(3). The fact that defendant was on parole when he committed this offense was taken into account by PRV 6. MCL 777.56. PRVs 1, 2 and 6 accounted for sixty-five of defendant's 75 points, which would indicate that they were given adequate weight under the guidelines, and the court did not make a finding that these factors were given inadequate weight under the guidelines as required by MCL 769.34(3)(b).

Therefore, the court erred in finding that these factors warranted a departure. However, the facts that defendant had once escaped from prison and had repeatedly absconded from parole within a short time frame are objective, verifiable factors not considered by the guidelines. Therefore, the court did not abuse its discretion in finding a substantial and compelling reason for departing from the guidelines.

Defendant also argues that there was insufficient evidence to support his conviction for unarmed robbery. We disagree. Due process requires that, when determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Unarmed robbery requires proof of “(1) the felonious taking of any property which may be the subject of larceny from the person or presence of the complainant, (2) by force and violence, assault or putting in fear, (3) while not armed with a dangerous weapon.” *People v Denny*, 114 Mich App 320, 323-324; 319 NW2d 574 (1982) (citations omitted). In this case, there was sufficient evidence presented from which any rational trier of fact could have found that the essential elements of unarmed robbery were proven beyond a reasonable doubt. Even in the absence of a gun, there was still sufficient evidence presented that defendant took the property by use of force, violence, or assault. Further, defendant's original intent in going to the victim's house is unimportant as long as defendant “intended to permanently deprive the victim of his property and the taking was accomplished through an assault or threat of violence.” *People v Jankowski*, 130 Mich App 143, 150; 342 NW2d 911 (1983). Questions of credibility are left to the trier of fact and will not be decided on appeal. *People v Avant*, 235 Mich App 499,

506; 597 NW2d 864 (1999). Accordingly, there was sufficient evidence to support defendant's conviction of unarmed robbery.

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Brian K. Zahra