

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY GORDON MCCLAIN,

Defendant-Appellant.

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UNPUBLISHED

November 26, 2002

No. 237083

Genesee Circuit Court

LC No. 01-008102-FC

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of nine to fifteen years' imprisonment for his plea-based conviction of involuntary manslaughter, MCL 750.321. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with murdering his wife in 1991 by striking her in the head with a rifle butt. He pleaded guilty of involuntary manslaughter in exchange for dismissal of the original charge of open murder, MCL 750.318. The applicable judicial sentencing guidelines<sup>1</sup> recommended a minimum term range of two to seven years' imprisonment. The trial court stated that it decided to exceed the guidelines on the grounds that defendant was not truthful with the police when the investigation began, defendant chose to not get medical assistance for his wife when he knew that she was in need of treatment, and he did not accept responsibility for his actions.

When imposing a sentence for an offense that is included in the sentencing guidelines, the court must use the applicable guidelines. MCR 6.425(D)(1). A sentence must be proportionate to the circumstances of the offense and the offender. A trial court abuses its discretion when it imposes a disproportionate sentence. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). A trial court may deviate from the guidelines when the recommended range is disproportionate to the seriousness of the offense and the defendant's prior record. *People v Bennett*, 241 Mich App 511, 516; 616 NW2d 703 (2000). When a court deviates from

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<sup>1</sup> The judicial sentencing guidelines apply to offenses committed prior to January 1, 1999. MCL 769.34(1); *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000).

the guidelines it must articulate on the record its reasons for doing so. *People v Fleming*, 428 Mich 408, 426; 410 NW2d 266 (1987).

Defendant argues that his minimum term of nine years' imprisonment is disproportionate to his circumstances and those of the offense. We disagree. 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). A court may consider whether circumstances of the case are adequately covered by the guidelines, and factors not adequately addressed in the guidelines are more compelling in a case in which the defendant pleaded guilty in exchange for dismissal of a more serious charge. *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990).

In this case, defendant killed his wife. The relationship between a defendant and the victim is not included in the guidelines. *Id.* at 323. Defendant failed to obtain medical treatment for her after striking her in the head. Also, defendant was charged with open murder, and if convicted of either first or second-degree murder, would have faced a sentence of life imprisonment. MCL 750.316; MCL 750.317. He pleaded guilty to involuntary manslaughter in exchange for dismissal of the charge of open murder. The trial court adequately explained its reasons for departing from the guidelines, *Fleming, supra*. We hold that defendant's sentence is not disproportionate under the circumstances. *Houston, supra* at 320; *Milbourn, supra* at 636.

Affirmed.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Michael R. Smolenski