

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM J. MOORE,

Defendant-Appellant.

UNPUBLISHED

January 22, 2004

No. 242744

Saginaw Circuit Court

LC No. 01-020216-FC

Before: O'Connell, P.J., and Wilder and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his sentences following a jury trial for assault with intent to murder, MCL 750.83, and first-degree home invasion, MCL 750.110a(2). The trial court sentenced defendant to consecutive terms of 25 to 50 years in prison on the assault and 13 to 20 years in prison for the home invasion. We affirm.

Both sentences represent an upward departure from the sentencing guidelines. Defendant asserts that this upward departure was not supported by substantial and compelling reasons and the sentences imposed were disproportionately long. We disagree.

This case represents one of the rare instances when a jury and sentencing judge are made completely aware of the brutal and heinous nature of the crimes committed. During defendant's romantic relationship with the victim, defendant did not display any violent or abusive propensities and the relationship progressed relatively normally. When the victim's daughter drove her home on the night of the crimes, however, the victim noticed a light on in her apartment. She went up to her apartment and found defendant inside. An argument ensued about whether the victim left her apartment door open. The victim asked defendant to leave, and he acquiesced, allowing the victim to escort him out peaceably.

The victim's daughter met the victim downstairs and walked her back to her apartment. After the victim grew comfortable again, however, the victim's daughter left. The victim decided to call her landlord about her locks and picked up the phone, but a presentiment struck her and she dialed 911 instead. Moments later, while speaking to the emergency operator, the victim heard a large boom. Defendant, who had burst through the building's outer door, then knocked at the victim's apartment door. When the victim did not answer his knock, defendant kicked in the door and spotted the victim on the phone. Approaching the victim, he asked her

whom she was talking to, but punched her in the chest before she answered. The phone flew from her hands, but the emergency operator continued to record the events as they transpired.

Defendant began stabbing the victim with a screwdriver first in the back and then in the inside of her ear. She asked him why he was stabbing her, but he did not answer her. She covered her face, fell to the ground, and feigned death, but defendant continued to stab her. He stabbed her in her arms, legs, stomach, shoulder, head, neck, and groin. When she asked again why he was doing it, he answered, “Bitch, you ain’t dead yet,” and continued to stab her.

Because the victim was talking to police before defendant broke into her apartment, they quickly arrived and defendant escaped from the scene. Police soon found him, however, with the bloody screwdriver still in his possession. The victim lost half her blood supply and barely survived defendant’s attack. But for the fortuitous telephone call to the police, the crime would have been murder. A recording of that call, with the accompanying sounds of defendant’s brutal and vicious attack, was played for the jury and judge.

Pursuant to MCL 769.34, a trial court must sentence a defendant within the applicable guidelines’ range, unless it finds a substantial and compelling reason to deviate from that range. *People v Babcock*, 469 Mich 247, 255-256; 666 NW2d 231 (2003). A substantial and compelling reason is “an ‘objective and verifiable’ reason that “‘keenly” or “‘irresistibly” grabs our attention”; is ‘of “considerable worth” in deciding the length of sentence’; and ‘exists only in exceptional cases.’” *Id.* at 257-258, quoting *People v Fields*, 448 Mich 58, 62, 67-68; 528 NW2d 176 (1995). We review de novo whether a trial court’s reasons for departure are objective and verifiable, but give the trial court deference for its discretionary determination that those reasons are substantial and compelling. *Babcock*, *supra* at 265, 269. The deviating sentence must also be proportionate in light of the offender’s actions and criminal history. *Id.* at 262.

In departing from the guidelines, the trial court found that the offense variable for the brutality of the attack did not sufficiently account for the circumstances of this offense. The trial court also considered that defendant broke into the victim’s home twice and then assaulted her for several minutes, expressly continuing his attack because she was not yet dead. We agree that this unusually vicious assault and the irrefutable proof of its brutality support the finding that this reason was objective and verifiable. Defendant stabbed the victim more than thirty times all over her body, including her inner ear and groin, while she screamed for help and pleaded for him to reconsider his actions. When the victim asked him why he was stabbing her, he replied that she was not yet dead. As the Supreme Court explained in *Babcock*, *supra*, by way of example, “if the defendant stabbed his victim multiple times, or in a manner designed to inflict maximum harm, that might constitute a substantial and compelling reason for departure because these characteristics may have been given inadequate weight in determining the guidelines range.” *Id.* at 258, n 12. Under the circumstances of this horrific case, we will not disturb the trial court’s discretionary holding that the level of brutality was substantial and compelling and justified the upward departure.

Giving deference to the trial court’s knowledge of the facts and direct familiarity with the circumstances of the offense and the offender, the horrible circumstances of this case prevent the sentences from being disproportionate. Taking into account defendant’s lack of criminal history as the sentencing judge did, we still conclude that the sentences imposed fit defendant and the

crimes he committed. See *People v Grady*, 204 Mich App 314, 315-316; 514 NW2d 541 (1994) (sentence of 40 to 60 years was not disproportionately severe where the guidelines' range was 8 to 25 years given the "multiple, grizzly [sic] wounds" inflicted).

Defendant next asserts that the trial court failed to consider that the guidelines were already "artificially inflated" by the scoring of prior record variable (PRV) 7 and the imposition of consecutive sentences adequately accounted for the severity of the offenses. However, defendant does not assert that PRV 7 was improperly scored and does not assert error in the imposition of consecutive sentences. Consecutive sentencing is explicitly allowed by MCL 750.110a(8). In determining whether a particular sentence is proportionate, a court need not consider the cumulative length of consecutive sentences. Rather, if each sentence is separately proportionate, the cumulative effect of consecutive sentences does not affect the proportionality of the sentences imposed. *People v Miles*, 454 Mich 90, 95, 559 NW 2d 299 (1997).

Affirmed.

/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray