

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBIE GEORGE,

Defendant-Appellant.

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UNPUBLISHED  
February 24, 2004

No. 241382  
Wayne Circuit Court  
LC No. 94-012633

Before: Neff, P.J. and Wilder and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right an order affirming his sentence for his conviction of second-degree murder, MCL 750.317; armed robbery, MCL 750.529; four counts of assault with intent to rob while armed, MCL 750.89; and felony-firearm, MCL 750.227(b). On the most recent remand from this Court,<sup>1</sup> the trial court sentenced defendant to concurrent terms of forty to sixty years' imprisonment. We affirm, but remand for completion of the sentencing information report guideline departure form.

Defendant claims the trial court abused its discretion by departing from the judicial sentencing guidelines because the reasons justifying its departure were accounted for in the scoring of OV 6 (multiple victims) and PRV 7 (subsequent or concurrent convictions) and because the trial court failed to consider defendant's background. Defendant contends this

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<sup>1</sup> After defendant appealed his original conviction and sentence, this Court affirmed defendant's conviction, but remanded for resentencing before a different judge because the trial court improperly sentenced defendant based on its belief that defendant committed first-degree murder. *People v Prince & George*, unpublished opinion per curiam of the Court of Appeals, issued February 28, 1997 (Docket Nos. 186979, 186988). After resentencing on remand, defendant again appealed and this Court again remanded for resentencing before a different judge because the trial court failed to familiarize itself with the case before resentencing defendant. *People v George*, unpublished opinion per curiam of the Court of Appeals, issued January 28, 2000 (Docket No. 214103). After the second resentencing on remand, defendant again appealed and this Court again remanded for articulation of the reasons for exceeding the sentencing guidelines. *People v George*, unpublished opinion per curiam of the Court of Appeals, issued February 26, 2002 (Docket No. 227353).

violates the proportionality principle of *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The key test of proportionality is whether a sentence reflects the seriousness of the matter. *People v Granderson*, 212 Mich App 673, 680; 538 NW2d 471 (1995), quoting *People v Houston*, 448 Mich 312; 532 NW2d 508 (1995). Where a defendant's actions are so egregious that standard guidelines' scoring methods simply fail to reflect their severity, an upward departure from the guidelines' range may be warranted. *Id.*

On remand, the trial court articulated that it departed because the "suggested guidelines certainly did in no way reflect the gravity of the offense." Specifically, the trial court stated: "[W]e have a very serious offense here. There's one victim who is dead, and five others who were robbed, and their lives were threatened, too. And there were children present." With regard to defendant's background, the record reflects that the trial court considered defendant's clean record the first time it sentenced defendant, but determined that the seriousness of the offense warranted the departure despite defendant's lack of a prior record. The remand order required the trial court to articulate its reasons for departure; it did not require the trial court to rearticulate every aspect of its sentencing decision. We agree with the trial court that this case warrants the upward departure and conclude that the trial court did not abuse its discretion in sentencing defendant.

But under the judicial sentencing guidelines, the trial court must articulate its reasons for departure both on the record *and* in the sentencing information report. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). Our review of defendant's sentencing information report reveals that the reasons for departure are not included. Remand is required for the ministerial task of completing the sentencing information report guideline departure form. *People v Bunn*, 166 Mich App 584; 421 NW2d 247 (1988).

Affirmed but remanded for completion of the sentencing information report guideline departure form. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Kurtis T. Wilder

/s/ Kirsten Frank Kelly