

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ORDELL KEYS, JR.,

Defendant-Appellant.

UNPUBLISHED
December 6, 2005

No. 254642
Wayne Circuit Court
LC No. 03-013742-01

Before: Gage, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of life in prison imposed on his jury conviction of larceny of property with a value of \$1,000 or more, but less than \$20,000, as a fourth habitual offender, MCL 750.356(3)(a), MCL 769.12. We affirm.

The statutory sentencing guidelines as scored for a fourth habitual offender established a minimum term range of twelve to forty-eight months for defendant's conviction of larceny. The trial court sentenced defendant to life in prison, stating that to the extent the sentence exceeded the guidelines, the departure was justified based on defendant's extensive criminal record.¹

To constitute a substantial and compelling reason for departing from the guidelines, a reason must be objective and verifiable, must irresistibly attract the attention of the court, and must be of considerable worth in deciding the length of the sentence. The reason for the departure must be articulated by the trial court on the record. MCL 769.34(3). A substantial and compelling reason articulated by the trial court to merit a departure from the sentencing guidelines must justify the particular departure at issue. *People v Babcock*, 469 Mich 247, 257-261; 666 NW2d 231 (2003).

In determining whether a sufficient basis exists to depart from the sentencing guidelines, the trial court must ascertain whether the departure would result in a sentence more proportionate to the seriousness of the offense and the defendant's criminal history than would adherence to the guidelines range. In addition, in departing from the guidelines range, the trial court must

¹ The trial court also sentenced defendant to life in prison and one to five years in prison in separate cases. Defendant does not challenge those sentences in this appeal.

determine whether the particular departure is proportionate to the circumstances of the offense and the offender. *Id.* at 262-264; *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

We review the determination of the existence of a factor for departing from the guidelines for clear error, the determination that a factor is objective and verifiable for error, and the determination that objective and verifiable factors merited departure from the guidelines range for an abuse of discretion. A trial court may depart from the guidelines range for nondiscriminatory reasons based on an offense or offender characteristic which was already considered in calculating the guidelines range if the trial court concludes that the characteristic was given inadequate or disproportionate weight. MCL 769.34(3)(b). An abuse of discretion exists when the sentence imposed is not within the range of principled outcomes. *Babcock, supra* at 265-269.

A sentence of life in prison is a departure from the guidelines if it is not recommended by the guidelines as scored for the appropriate habitual offender level. MCL 777.21(3); *People v Houston*, 261 Mich App 463, 474-475; 683 NW2d 192 (2004), *aff'd* 473 Mich 399; 702 NW2d 530 (2005).²

We affirm. The life sentence constituted a departure from the guidelines. MCL 769.34(4)(c); *Houston, supra* at 475. MCL 777.51, MCL 777.52, MCL 777.55, and MCL 777.56 took defendant's prior convictions and relationship to the criminal justice system into account in the calculation of the minimum sentence range. However, the guidelines did not account for the objective and verifiable facts that defendant had seven prior felony convictions, that he had served prior jail terms and a prison term for unarmed robbery, and that he had consistently refused to conform his behavior to the requirements of the law, notwithstanding the fact that he had been given multiple opportunities to do so since he began committing offenses nearly forty years ago. The trial court did not err in finding that the guidelines gave inadequate weight to the depth and breadth of defendant's prior record, MCL 769.34(3)(b), and did not clearly err in finding that that fact constituted a reason to depart from the guidelines. The extent of defendant's prior record was objective and verifiable, irresistibly attracted the attention of the trial court, and was of considerable worth in deciding the length of the sentence to be imposed in the instant case. *Babcock, supra* at 258. The departure from the guidelines, while extensive, was authorized by statute, MCL 769.12(1)(a), was not outside the range of principled outcomes under the circumstances, and was proportionate to defendant's circumstances and those of the offense. *Milbourn, supra*. No abuse of discretion occurred. *Babcock, supra* at 265-269.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray

² Defendant's conviction offense, larceny, is a class E offense for which life in prison is never recommended by the guidelines. MCL 777.66.