

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEENAN LEE ROBINSON,

Defendant-Appellant.

UNPUBLISHED
February 21, 2008

No. 269605
Wayne Circuit Court
LC No. 04-005425-01

ON REMAND

Before: Meter, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Defendant originally appealed as of right from his convictions by a jury of second-degree fleeing and eluding, MCL 750.479a(4), carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, possession of a firearm during the commission of a felony, MCL 750.227b, and three counts of felonious assault, MCL 750.82. Defendant was sentenced, as a fourth-offense habitual offender, MCL 769.12, to 20 to 30 years in prison for the fleeing and eluding conviction; eight to 15 years each for the carrying a concealed weapon, felon in possession of a firearm, and three felonious assault convictions; and five years for the felony-firearm conviction. We affirmed defendant's convictions and also denied his motion to file a supplemental brief, in which he attempted to argue that the trial court erred in sentencing him to 20 to 30 years in prison for the fleeing and eluding conviction. *People v Robinson*, unpublished opinion per curiam of the Court of Appeals, issued July 19, 2007 (Docket No. 269605); *People v Robinson*, unpublished order of the Court of Appeals, entered July 17, 2007 (Docket No. 269605).

The Supreme Court has now directed us to consider the issue raised in the supplemental brief. *People v Robinson*, 480 Mich 947; 741 NW2d 26 (2007). Specifically, the Court has directed us to consider "whether the trial court's upward departure from the applicable sentencing guidelines range, and extent of departure, were supported by substantial and compelling reasons." *Id.* We conclude that the trial court did not err in sentencing defendant, and we therefore affirm defendant's sentence.

A court may depart from a sentencing guidelines range if it has a substantial and compelling reason to do so and states on the record the reasons for departure. MCL 769.34(3); *People v Buehler*, 477 Mich 18, 24; 727 NW2d 127 (2007). Factors meriting departure must be objective and verifiable, must keenly attract the court's attention, and must be of considerable worth. *People v Babcock*, 469 Mich 247, 257-258; 666 NW2d 231 (2003). To be objective and

verifiable, a factor must be an action or occurrence “external to the minds of the judge, defendant, and others involved in making the decision, and must be capable of being confirmed.” *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). A departure from the guidelines range must render the sentence proportionate to the seriousness of the defendant’s conduct and his criminal history. *Babcock*, *supra* at 264.

In reviewing a departure from a sentencing guidelines range, the existence of a particular factor is a factual determination subject to review for clear error, the determination that the factor is objective and verifiable is reviewed as a matter of law, the determination that a factor or factors constituted a substantial and compelling reason for departure is reviewed for an abuse of discretion, and the amount of the departure is also reviewed for an abuse of discretion. *Babcock*, *supra* at 264-265; *Abramski*, *supra* at 74. An abuse of discretion exists when the trial court’s ruling is not within the range of principled outcomes. *Babcock*, *supra* at 269-270.

A court may “base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range” as long as “the court finds from the facts in the court record that the characteristic has been given inadequate or disproportionate weight.” *Abramski*, *supra* at 74.

The sentencing guidelines for the second-degree fleeing and eluding conviction called for a minimum sentence of 34 to 134 months in prison. The court sentenced defendant to 240 to 360 months in prison. The trial court’s reasons for departing from the guidelines included: (1) defendant led the police on a high-speed chase through a residential neighborhood, (2) the scoring of the guidelines did not adequately account for the number of victims and defendant’s serious criminal history, (3) defendant ultimately stopped fleeing only after a police officer shot him, and (4) defendant “took off” before trial and had to be apprehended again, which happened as a result of defendant breaking into a car.

Defendant was assessed 15 points under offense variable 1 because “[a] firearm was pointed at or toward a victim . . .” MCL 777.31(1)(c). However, the statute instructs that “each person who was placed in danger of injury or loss of life” should be counted as a victim. MCL 777(2)(a). The trial court noted that there were *three* victims in this case. Also, defendant was assessed 30 points under prior record variable 2 for his “4 or more prior low severity felony convictions . . .” MCL 777.52(1)(a). The court remarked that the guidelines inadequately accounted for the seriousness of defendant’s prior offenses, which included fleeing and eluding police and the “use of weapons and assaulting people . . .” The court considered that defendant, “when attempted to be stopped by the police is going [to] flee and put every honest, innocent citizen in peril just because he wants to get away.” Given the offense variable scoring for only one victim and the nature of defendant’s prior offenses, the trial court did not err in giving additional weight to these factors and in relying on them to support the departure from the guidelines.

The trial court also based its departure on factors not addressed by the sentencing guidelines. The court commented that defendant failed to report for trial, that he ultimately appeared for trial only because he was caught attempting to break into a car, and that he was only apprehended initially because he was shot by a police officer. Also, the court noted that the fleeing and eluding took place in a residential neighborhood where children were likely to be present. These are the kinds of factors that “keenly” grab a court’s attention and are “of

considerable worth” in determining the appropriate length of a sentence. See, e.g., *Abramski, supra* at 75 (affirming upward departure in sentencing where the defendant’s fleeing and eluding endangered the lives of police officers and other motorists). The severity of defendant’s behavior was heightened by the danger posed to innocent persons and warranted an upward departure from the sentencing guidelines.

We find that the trial court did not err in finding there were substantial and compelling reasons to justify the departure from the guidelines and the sentence imposed. The court articulated several factors meriting the upward departure. The court’s reasons were objective and verifiable, and they were also substantial and compelling. We acknowledge that the extent of the departure was significant. However, considering the circumstances surrounding the offense and the offender, the sentence imposed was proportionate. Defendant’s sentence fell within the range of principled outcomes and thus did not constitute an abuse of discretion. *Babcock, supra* at 269-270.

We affirm defendant’s sentence.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Donald S. Owens