STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 21, 2008
v	No. 276819 Oakland Circuit Court
CHRISTOPHER ADAM LUCAS, Defendant-Appellant.	LC No. 06-210320-FC

Before: Schuette, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317, interfering with electronic communications, MCL 750.540, and domestic assault, MCL 750.81(2).[1] He was sentenced as a second habitual offender, MCL 769.10, to 60 to 100 years in prison for the second-degree murder conviction, one to two years in prison for the interfering with electronic communications conviction, and 93 days in prison for the domestic assault conviction. We affirm.

I. Statement of Facts

Kari Spirl returned home from work at approximately 3:00 or 3:30 p.m. on August 15, 2006, to the mobile home she shared with her stepfather and brother, who were away trucking; her mother, Martha Wallace; defendant; and Madison, defendant and Kari's five-month old daughter. Kari had left that morning despite threats from defendant that he would kill her if she went to work. He did not want her to go because he did not trust her and was afraid she would find another boyfriend. She went to work anyway because she was the only person in the household besides her stepfather who was employed. When Kari returned home, she and defendant ran some errands for Martha.

When they returned from running errands, Kari's friend, Ashley, and Ashley's boyfriend, Jeff, were inside the home. Defendant decided that he wanted to start drinking and finished about half of a fifth of vodka. Because they were tired of sitting in the house, Kari, defendant, Madison, Ashley, and Jeff went to a Starbucks and a grocery store. Kari drove a minivan owned

[1] Defendant was acquitted of first-degree murder, MCL 750.316.

by her stepfather. At the grocery store, Kari picked up the food and milk assistance that she receives from the state for Madison, and defendant stole two fifths of liquor by putting them into Madison's diaper bag. Defendant drove home. After they returned home at approximately 7:00 or 7:30 p.m., Kari began making a bottle for Madison, while defendant, who had begun drinking the stolen liquor, held Madison. Defendant was rocking hard in a recliner and flipped the recliner over backwards. Madison began to cry and defendant took her into Kari's bedroom. Kari was concerned and went into the bedroom to see if Madison was all right. Defendant told Kari to leave Madison alone and everything would be fine. Kari left the bedroom because defendant was a violent person who had hit her before and she was concerned about what would happen to her if she did not.

Martha called Kari into her bedroom. They had a brief conversation during which Kari told her mother not to "cop an attitude" because she knew that if anyone were to "cop an attitude," defendant would "freak out." He would "get upset, he'd jump around and rip his shirt off and destroy things." After Kari went to check on Madison again, Martha told Kari that she wanted defendant out of the house. Kari told Martha not to say anything, to stay in the bedroom, and everything would be okay. Defendant heard Martha say something, but he did not hear what she said. He rushed into Kari's bedroom and asked Kari whether Martha had a problem. Kari told him that she did not know. Defendant appeared anxious and upset. He told her to go in and find out what was wrong with Martha and to "make sure she did not have an attitude." Kari went into Martha's bedroom and told her to call 911. When Martha tried to call, she could not, because the phone was unplugged, but when Kari asked defendant why the phone was not working, defendant plugged in the phone line in the kitchen. Ashley and Jeff were sitting on the couch.

Martha came out of her bedroom, then went back in to try to call the police. Defendant, who was getting angry, wanted to know what Martha's problem was and why she wanted to use the phone. Kari told him that Martha was mad at her because she had taken the van without telling Martha. Defendant got upset and told Kari that she should be more responsible and should not have taken the van. He said that he was not going to get in trouble for it, and that no one was going to call the police. Then he ripped the phone cord out of the wall, severing the phone line. Martha came out of her bedroom and asked Ashley if she could use her cell phone. Defendant told Ashley and Jeff to get out of the house, and as they were leaving, threatened to kill Jeff if Ashley called the police.

After Ashley and Jeff left the house, Kari tried to calm defendant down. She put her hands up and assured him that everything was going to be all right, told him not to worry, and promised him that no one was trying to call the police. Martha was standing beside Kari. Defendant ripped his shirt off. Kari had seen him do that before and thought, "[e]verything's about to hit the fan." Martha tried to push Kari behind her, but defendant pulled Kari toward him. Martha told him to calm down and said that no one was trying to get him in trouble. Defendant told them to get into Martha's bedroom. Kari continued to try to calm defendant down. He pushed Kari toward the bedroom, and she hit her head on the doorframe. Martha then walked toward defendant. She was not threatening him or holding any weapons. He turned around and punched her in the face. Martha fell backwards and was lying on the hard floor. She was not moving. Defendant began stomping on Martha's face. He stomped on her face two or three times. Kari stood up and started screaming. Defendant ran at her and threw her on

Martha's bed. He punched her in the head several times and told her in a low, threatening voice that she was going to die. When Kari yelled for Martha to help her, defendant said, "You want to yell for your mom? We'll see how well she can help you." He jumped off the bed, ran into the living room, stomped on Martha's face two or three more times, and began punching her.

Kari got up and tried to close and lock the bedroom door, but defendant "body slammed" the door, which broke off its hinges and landed on Kari. Defendant punched her in the head and told her to get up. Then he ran out of the house. Kari ran over to Martha and tried to roll her over onto her side because it sounded like she was choking. Defendant came back into the house, punched Kari in the head, and told her that she could not help Martha. He told her to get Madison because they were leaving. Kari grabbed Madison and defendant grabbed Kari's purse with the keys to the van and they went outside. Kari told defendant that they could not go anywhere without Madison's car seat. When he went back inside to get it, Kari, apparently still holding Madison, ran to a neighbor's house and called 911. Kari then returned to the house because someone had told her that the police were there. The van was gone, the police had not yet arrived, and Martha was still lying on the floor. She was not breathing and had no pulse. Police and medical personnel eventually arrived, and Martha was taken to the hospital. She died approximately 16 hours later.

Police witnesses and a neighbor testified that there was blood, bruising, and shoe imprints on Martha's face. The medical examiner who performed the autopsy observed multiple bruises on her face, neck, and chest, and shoe imprints on her chin and both cheeks. He also observed a hemorrhage deep in her skull and on the top areas of her brain and multiple fractured ribs on the left side of her chest. He testified that the cause of death was blunt force head and chest trauma with complications and that the manner of death was homicide.

II. Jury Instructions

Defendant first argues that the trial court erred in refusing his request for a jury instruction on voluntary manslaughter. We disagree.

Although we review questions of law pertaining to jury instructions de novo, including a trial court's ruling on a request for a necessarily included lesser offense instruction, *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006); *People v Walls*, 265 Mich App 642, 644; 697 NW2d 535 (2005), we review for an abuse of discretion a trial court's determination whether a jury instruction applies to the facts of the case. *Gillis*, *supra* at 113.

"A necessarily included offense is one that must be committed as part of the greater offense; it would be impossible to commit the greater offense without first having committed the lesser." *People v Alter*, 255 Mich App 194, 199; 659 NW2d 667 (2003) (quotations and citations omitted). "[P]ursuant to MCL 768.32(1),[2] a trial court, upon request, should instruct the jury

[2] MCL 768.32(1) provides: "Except as provided in subsection (2), upon an indictment for an offense, consisting of different degrees, as prescribed in this chapter, the jury, or the judge in a trial without a jury, may find the accused not guilty of the offense in the degree charged in the indictment and may find the accused person guilty of a degree of that offense inferior to that (continued…)

regarding any necessarily included lesser offense . . . if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense, and a rational view of the evidence would support it." *People v Silver*, 466 Mich 386, 388; 646 NW2d 150 (2002), citing *People v Cornell*, 466 Mich 335; 646 NW2d 127 (2002). Because voluntary manslaughter is a necessarily included offense of murder, the trial court in this case was required to provide a jury instruction for that offense if it was supported by a rational view of the evidence. *People v Mendoza*, 468 Mich 527, 541; 664 NW2d 685 (2003).

"To prove voluntary manslaughter, the prosecution must prove that: (1) the defendant killed in the heat of passion; (2) the passion was caused by adequate provocation; and (3) there was no lapse of time during which a reasonable person could have controlled his passions." *People v Tierney*, 266 Mich App 687, 714; 703 NW2d 204 (2005). An adequate provocation is one that would cause a reasonable person to lose control. *Id*. at 715. Whether a provocation is adequate is a question of fact for the jury, except where no reasonable jury could conclude that the provocation was adequate. *Id*.

In this case, defendant requested an instruction on voluntary manslaughter, but the trial court denied his request. It found that an ordinary person would not have gone into such a rage over believing that Martha was angry at him for taking the vehicle as to hit her in the face and stomp on her face on two separate occasions. The court therefore concluded that the facts did not meet the standard for adequate provocation. We agree with the trial court. In *People v Hawthorne*, 265 Mich App 47; 692 NW2d 879 (2005), rev'd on other grounds 474 Mich 174 (2006), the defendant and Jeffries, the victim, got into an argument over a $5 bet. The argument escalated, and the defendant left the room and returned with an automatic handgun, which two other men unsuccessfully tried to take from him. Jeffries said to defendant, "'What you going to do with the gun? We supposed to be family. We supposed to be better than that. What, you going to shoot me?'" *Id.* at 49. Jeffries then challenged the defendant to a fight, but the defendant put the barrel of the gun against Jeffries's chest. After a struggle, the gun fired and Jeffries was shot. The defendant claimed that it was an accident. *Id.* at 49-50. This Court agreed with the trial court that a rational view of the evidence did not support an instruction on voluntary manslaughter. It reasoned:

> The disagreement originated over a $5 bet. Defendant was the person responsible for escalating the argument, as well as the person who retrieved a gun. Although Jeffries challenged defendant to a fight, this action was a last-resort attempt to turn the situation from a deadly one into a mere fistfight. Rather than agreeing to a fistfight, defendant reacted by escalating the conflict again by pointing the gun at Jeffries's chest. The gun discharged when Jeffries grabbed defendant's wrist and the two fought over control of the gun. There is no evidence that Jeffries provoked defendant to such an extent that a reasonable person would lose control. In fact, it appears from the evidence that defendant was the provocateur. [*Id*. at 58-59.]

(…continued)

charged in the indictment, or of an attempt to commit that offense."

Similarly, in this case, defendant vastly overreacted to a situation in which he apparently believed he was being accused of having taken the minivan. He reacted with extreme violence to a situation in which no one else was behaving violently or in a threatening manner or had any weapons. Defendant claims on appeal, as he did before the trial court, that the accusation that he took the minivan constituted adequate provocation to instruct the jury on voluntary manslaughter. However, neither Martha nor Kari ever said that Martha was upset about defendant having driven the van. In an apparent attempt to hide what Martha had actually said — that she wanted defendant out of the house — in order to prevent defendant from becoming angry, Kari told defendant that Martha was mad at *Kari* for using the minivan without asking permission. Although it can be inferred that defendant had been in trouble for using the minivan in the past, no one on this occasion accused defendant of stealing the van or using it without permission. Additionally, even had there been such an accusation directed at defendant, a reasonable jury would not conclude that it would cause a reasonable person to lose control as defendant did in this case.

Moreover, when defendant became angry, both women tried to diffuse the situation. Kari said, "Baby, everything's going to be all right. Nobody's trying to call the police on you. You're not going to get in trouble for the van." Martha was also trying to calm defendant, telling him that no one was trying to get him in trouble. When she walked toward him, not threatening him, carrying any weapons, nor trying to hit him, he punched her in the face, and, after she fell backwards onto the floor, stomped on her face two or three times. Further, when he was later punching Kari in the bedroom and she yelled for her mom to help her, defendant said, "You want to yell for your mom? We'll see how she can help you," then ran back into the living room, stomped on Martha's face two more times, and punched her. No rational view of the evidence supports the proposition that this situation would provoke a reasonable person to react with extreme violence against two people who were not displaying any threatening behavior. There was no evidence that anyone other than defendant even raised his or her voice or was doing anything other than attempting to prevent defendant from becoming enraged. Therefore, the trial court did not abuse its discretion in concluding that a voluntary manslaughter instruction was not supported by a rational view of the evidence.

III. Scoring of Offense Variables

Defendant next argues that the trial court abused its discretion by scoring 50 points for OV 7, ten points for OV 9, ten points for OV 10, and ten points for OV 17. We find that defendant's argument is moot with respect to OV 10 and OV 17 and disagree with respect to OV 9 and OV 7.

After filing his claim of appeal in this Court, defendant filed a motion to remand seeking, to file a motion for resentencing in the trial court. This Court granted defendant's motion on April 18, 2008, and retained jurisdiction. *People v Lucas*, unpublished order of the Court of Appeals, entered April 18, 2008 (Docket No. 276819). In his motion for resentencing, defendant contested, among other things, the trial court's scoring of OV 10 and OV 17. The trial court agreed, but declined to resentence him, noting that it would impose the same sentence after

correcting the guidelines scoring because its reasons for departing upward were unchanged.[3] Given the trial court's agreement with defendant on OV 10 and OV 17, his argument on appeal with respect to these offense variables is moot.[4]

We review a trial court's scoring decision for an abuse of discretion. *People v Cox*, 268 Mich App 440, 453-454; 709 NW2d 152 (2005). A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). Scoring decisions for which there is any evidentiary support will be upheld. *Id.*

OV 7 is "aggravated physical abuse." MCL 777.37. MCL 777.37(1)(a) indicates a score of 50 for this variable where "[a] victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." "'[S]adism' means conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification." MCL 777.37(3). At sentencing, defendant argued that, because Martha likely lost consciousness as soon as she fell backward onto the floor, she could not have "appreciated or become more fearful or anxious as the defendant continued with the things that we acknowledge are true." On appeal, he argues that, in overruling this objection, the trial court improperly relieved the prosecution of its burden of establishing the facts necessary to support the scoring of an offense variable.

The evidence at trial, however, established that defendant treated Martha with sadism, torture, excessive brutality, or conduct designed to increase her fear and anxiety within the meaning of the statute. Defendant punched her in the face, stomped on her face two or three times, then returned to stomp on her face two more times after Kari called out for Martha's help. Defendant stomped with enough force to leave shoe imprints on Martha's face. She also suffered a brain hemorrhage and several cracked ribs. The prosecution was not required to prove that Martha was conscious during this abuse. See *People v James*, 267 Mich App 675, 680; 705 NW2d 724 (2005) (upholding the trial court's scoring of 50 points for OV 7 where the evidence indicated that the defendant "repeatedly stomped the victim's face and chest after the victim was lying unconscious on the ground," and the victim was deprived of oxygen for four to six hours, causing significant brain damage).

In addition, even if defendant's physical abuse of Kari did not rise to the level of excessive brutality or torture, his "conduct" could properly be considered in scoring this factor because it was "designed to substantially increase the fear and anxiety [she] suffered during the offense." MCL 777.37(1)(a); see *People v Mattoon*, 271 Mich App 275, 277-278; 721 NW2d 269 (2006) (holding that physical abuse is not required to score 50 points for OV 7 because "conduct" other than physical abuse may produce pain or humiliation). After defendant knocked

[3] The change in scoring did not affect the guidelines range. Any OV score over 100 points places a defendant at level III, and the change reduced defendant's score from 160 to 140. MCL 777.61; MCL 777.16p.

[4] Defendant's brief on appeal was filed before the trial court issued its order granting in part and denying in part defendant's motion for resentencing.

Martha to the floor and stomped on her face, he was punching Kari in the bedroom and she called out for Martha to help her. Defendant said, "You want to yell for your mom? We'll see how she can help you," then ran back into the living room, stomped on Martha's face two more times, and punched her. Because such conduct substantially increased the anxiety or fear that Kari suffered, it supported the trial court's scoring of 50 points for OV 7.

OV 9 addresses the number of victims. The trial court scored ten points for this OV. MCL 777.39(1)(c) authorizes a score of ten points under OV 9 where "[t]here were 2 to 9 victims who were placed in danger of physical injury or death." The evidence supports the trial court's scoring of ten points for this OV. Martha was properly counted as a victim because she suffered physical injury and death as a result of defendant's conduct. Defendant argues that Kari cannot be counted as a "victim" for purposes of OV 9 because she "was not a 'victim' of the second-degree murder offense." However, the trial court properly counted Kari as a victim because she was present during defendant's commission of the sentencing offense and was placed in danger of physical injury or death. *People v Sargent*, 481 Mich 346, 350, 350 n 2; 750 NW2d 161 (2008). The statute provides that the sentencing court must "[c]ount each person who was placed in danger of physical injury or loss of life or property as a victim." MCL 777.39(2)(a). Kari was placed in danger of, and actually suffered, physical injury. She testified that defendant pushed her, causing her to hit her head on a doorframe, and punched her in the head several times. The evidence also supported a finding that Kari was placed in danger of death. She testified that, while defendant was repeatedly punching her in the head, he was telling her that she was going to die. Accordingly, the trial court did not abuse its discretion in scoring ten points under OV 9.

IV. Upward Sentencing Departure

Defendant next argues that the trial court abused its discretion in departing upward from the sentencing guidelines with respect to his second-degree murder sentence. We disagree.

We review for clear error a trial court's stated reasons for departing from the sentencing guidelines, and its conclusion that such a reason is objective and verifiable is reviewed de novo as a question of law. *People v Smith*, ____ Mich ____; 754 NW2d 284 (Docket No. 134682, decided July 31, 2008), slip op at 7. The amount of the departure and whether the stated reasons are substantial and compelling are reviewed for an abuse of discretion. *Id.* "[A]n abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). "When the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment." *Id.*

The legislative sentencing guidelines apply to convictions for felonies committed after January 1, 1999. MCL 769.34(2). A trial court must impose a sentence within the range recommended by the guidelines and may depart from the guidelines recommendation only if it states on the record a substantial and compelling reason for the departure. MCL 769.34(3); *Babcock*, *supra* at 258. "[T]he substantial and compelling reason . . . must also be objective and verifiable, must keenly or irresistibly grab our attention, and must be of considerable worth in deciding the length of a sentence." *People v Solmonson*, 261 Mich App 657, 668; 683 NW2d 761 (2004). In addition, a substantial and compelling reason is one that exists only in

exceptional cases. *Babcock, supra* at 258. The trial court may not base a departure on an offense or offender characteristic already taken into account in the scoring of the guidelines unless it finds that the characteristic has been given inadequate or disproportionate weight. MCL 769.34(3)(b); *Babcock, supra* at 258 n 12. Finally, "the statutory guidelines require more than an articulation of reasons for *a* departure; they require justification for the *particular* departure made." *Smith, supra*, slip op at 11 (emphasis in original). Accordingly, a trial court that departs from the guidelines "must explain why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been." *Id*. at 12.

In this case, defendant, as a second habitual offender, MCL 769.10, faced a guidelines minimum range of 315 to 656 months or life, MCL 777.61, as enhanced pursuant to MCL 777.21(3)(a). The trial court departed from the guidelines by imposing a minimum sentence of 60 years, which is roughly 5½ years more than the top end of the guidelines range.

The amended judgment of sentence provides that the rationale for the upward departure was the "heinous and brutal nature of [the] crime and previous offenses." At the sentencing hearing, the trial court spoke at length regarding the sentence being imposed. The court stated:

> All right. I have carefully studied the presentence report and recommendation. I've had the benefit of a forensic evaluation as well as an independent evaluation. I had the opportunity to sit through the trial, so I'm certainly, I believe, as familiar and have the kinds of information that a judge needs in order to pass sentence.
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> [M]artha, the victim in this case, died in one of the most brutal ways I've ever seen in my many, many years on the bench and in my career in general.
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> The record in this case is replete with a history of violence. This is a man who bragged about his physical prowess, had been a wrestler, had been a boxer, was certainly familiar with the martial arts. And he hits this . . . woman harder than he ever hit any man. You know, that's, I guess, his definition of being a man[.]
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> He placed this family in a reign of terror for a period of time. When I reviewed the victim impact statements, it became very, very clear to me that this was a situation where the defendant, by his action and his deeds, made it clear to those that had the misfortune of loving him and of trying to help him, that if they didn't do what he wanted, that if they had the audacity to make him mad, that he would explode and threaten . . . to kill and maim and do terrible harm.
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> * * *
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> People who wanted to call the police were threatened that, if you do that, you're going to be dead.

* * *

> This, as I said before, was one of the most brutal, cold, senseless acts I have seen. . . . *I'm going to go above the guidelines because the guidelines do not reflect the brutality and the heinous nature of this crime*.
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> Let's just start with the fact that the defendant's fiancée had to witness her mother being brutally beaten and stomped on so hard that the defendant's shoe prints were left on her face on at least three different occasions. He's beating her, his fiancée, who he claims to love. And really, what he was doing was again making sure that she understood that he was in control, and she described it today in her victim impact statement that she could have no friends, you know, that he completely controlled her life and that her mom, who wanted to protect her daughter, interfered with that control, with that action on behalf of the defendant, and she paid for it with her life.
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> The brutality of it obviously is clear from the nature of the injuries, the fact that this poor woman lingered 16 hours, clinging to life. But where a daughter cries out for her mom, "Mom, help me. Mom, come to my rescue," and when the mom – and what does the defendant do? He leaves off beating his love, his child's mother . . . and kicks her in the head and punches her in the head, as if to say your mom's not going to be there to help you. And that, to me, was the final act of a sociopathic personality . . . .
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> So for all those reasons, the Court feels that to go above the guidelines would be appropriate. [Emphasis added.]

The presentence investigation report indicates that defendant has convictions for, in part, retail fraud, stalking, assault with intent to rob while armed, and malicious use of a phone to threaten.

While OV 7 already addressed the issue regarding aggravated physical abuse, the trial court clearly found, "from the facts contained in the court record, including the presentence investigation report, . . . that the characteristic ha[d] been given inadequate or disproportionate weight," MCL 769.34(3)(b), where the court expressed that "the guidelines do not reflect the brutality and the heinous nature of this crime." Given the record, we find no error in this assessment. Further, the trial court's reasoning justified the extent of the particular upward departure, which was not that significant, essentially 5 more years from the 55-year high end of the guidelines range. Compare *Smith, supra*, slip op at 3-5 (trial court doubled the highest minimum term under the guidelines). Finally, although the trial court did not use express "proportionality" terminology, it clearly voiced its position, by way of accurate recitation of facts in the record, that the imposed sentence was more proportionate than one within the guidelines, considering the egregious nature of the crime and its circumstances. Defendant, standing over six feet tall and weighing over 200 pounds, with a significant criminal history and a background in boxing, deliberately mocked and emotionally and physically brutalized Kari in the process of killing her mother by repeatedly stomping on her face, leaving shoe imprints, and beating her in

a manner harder than he had ever struck a man. Defendant then forced Kari to leave her dying mother alone in the home. Indeed, it would be absurd not to conclude that the sentence was proportionate to the offense and the offender. In *Smith, id.*, slip op at 29, the Court stated that departures "cannot be assessed with mathematical precision," and a "trial court must comply *reasonably* with its obligations under the guidelines, as set forth in this opinion[.]" (Emphasis in original.) Here, the trial court complied reasonably with its obligations.

V. Jail Credit

Defendant next argues that the trial court erred in failing to award defendant jail credit for the 106 days he served in the Oakland County Jail before sentencing. We disagree. We review de novo as a question of law whether the trial court erred in failing to award defendant jail credit relative to the interpretation of the applicable statutes. *People v Filip*, 278 Mich App 635, 640; 754 NW2d 660 (2008).

As this Court established in *People v Seiders*, 262 Mich App 702; 686 NW2d 821 (2004), and recently reaffirmed in *Filip*, *supra*:

> When a parolee is arrested for a new criminal offense, he is held on a parole detainer until he is convicted of that offense, and he is not entitled to credit for time served in jail on the sentence for the new offense. MCL 791.238(2). A parole detainee who is convicted of a new criminal offense is entitled, under MCL 791.238(2), to credit for time served in jail as a parole detainee, but that credit may only be applied to the sentence for which the parole was granted. A parolee who is sentenced for a crime committed while on parole must serve the remainder of the term imposed for the previous offense before he serves the term imposed for the subsequent offense. MCL 768.7a(2). [*Seiders*, *supra* at 705 (citations omitted).]

When defendant was arrested in connection with the offenses underlying this case on August 15, 2006, he was on parole for an unrelated offense. He served 106 days in the Oakland County Jail before he was sentenced on November 29, 2006. The trial court awarded him 106 days' credit on his 93-day misdemeanor domestic violence conviction, but no credit on his felony second-degree murder and interfering with electronic communications convictions, because of his parole status. On appeal, defendant contends that, because he has already served the minimum term of his prior sentence, and the parole board did not require him to serve any "additional minimum portion" of that sentence because of his parole violation, "the trial court's failure to award jail credit on the new sentence results in 'dead time,' violating the Legislature's intent and arbitrarily increasing [his] punishment." This Court addressed this issue in *Filip*, *supra* at 642 :

> MCL 791.238(2) specifically dictates that a parole violator "is liable, when arrested, to serve out the unexpired portion of his or her maximum imprisonment." And any remaining portion of the original sentence must be served before a sentence for a second offense may begin. Thus, just because a parolee has served his or her minimum sentence, it does not follow that the credit must therefore be applied against his or her new sentence when he or she remains liable to continue serving out the maximum sentence. Moreover, if a defendant is

> not required to serve additional time on the previous sentence because of the parole violation, then the time served is essentially forfeited. [Citations omitted.]

Therefore, even if defendant served the minimum time on his previous sentence and was not required to serve additional time for violating his parole, he is not entitled to credit against his sentences in this case.

Affirmed.

/s/ Bill Schuette
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald