

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRANDON TIRRELL ROBBS,

Defendant-Appellant.

UNPUBLISHED

January 8, 2009

No. 282124

Wayne Circuit Court

LC No. 07-007148-FH

Before: Zahra, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

After a jury trial, defendant Brandon Tirrell Robbs was convicted of attending a dogfight, MCL 750.49(2)(f). The trial court departed from the sentencing guidelines range of zero to six months and sentenced defendant to one to four years’ imprisonment. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Attending a dogfight is a Class H crime against public order subject to the statutory sentencing guidelines. MCL 777.16b. Defendant’s sentencing guidelines range was zero to six months. MCL 777.69. When the upper limit of the applicable guidelines range is 18 months or less, “the court shall impose an intermediate sanction unless the court states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the department of corrections.” MCL 769.34(4)(a). An intermediate sanction is “probation or any sanction, other than imprisonment in a state prison or state reformatory, that may lawfully be imposed.” MCL 769.31(b). “An intermediate sanction may include a jail term that does not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever is less,” MCL 769.34(4)(a), but it does not include a prison sentence. *People v Stauffer*, 465 Mich 633, 635; 640 NW2d 869 (2002). Thus, the guidelines permitted no more than a six-month jail sentence unless the court found a substantial and compelling reason to depart from the guidelines. *People v Muttscheler*, 481 Mich 372, 375; 750 NW2d 159 (2008). The court elected to depart from the guidelines, finding that they did not account for the nature and severity of the offense or for defendant’s probationary status.

“[T]he Legislature intended ‘substantial and compelling reasons’ to exist only in exceptional cases.” *People v Fields*, 448 Mich 58, 68; 528 NW2d 176 (1995). Only objective factors that are capable of verification may be used to assess whether there are substantial and compelling reasons to deviate from the minimum sentence range under the guidelines. *People v*

Babcock, 469 Mich 247, 256-257; 666 NW2d 231 (2003). Objective and verifiable factors are “actions or occurrences that are 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 is appropriate “if there are substantial and compelling reasons that lead the trial court to believe that a sentence within the guidelines ranges is not proportionate to the seriousness of the defendant’s conduct and to the seriousness of his criminal history,” such that a departure would result in “a more proportionate criminal sentence than is available within the guidelines range.” *Babcock, supra* at 264.

On appeal, we review the existence of a reason for departure for clear error. *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008). “The conclusion that a reason is objective and verifiable is reviewed as a matter of law.” *Id.* Whether the reasons cited by the court “are substantial and compelling enough to justify the departure is reviewed for an abuse of discretion, as is the amount of the departure.” *Id.* An abuse of discretion occurs “when the minimum sentence imposed falls outside the range of principled outcomes.” *Id.*

Defendant’s offense variables (OV) were all scored at zero points and, thus, these variables did not take into account the injuries incurred by any of the dogs, presumably because dogs are considered property rather than crime victims.¹ At least one dog sustained puncture wounds and two other dogs were shot when they turned on the police. The guidelines did not account for the mistreatment of the animals, nor did they adequately account for defendant’s conduct, which involved turning a blind eye to the suffering of the animals for the sake of entertainment. Further, although the guidelines accounted for defendant’s youthful trainee status at the time of the offense, they did not account for the fact that defendant violated his probation by committing the offense. See *People v Schaafsma*, 267 Mich App 184, 186; 704 NW2d 115 (2005) (“[T]he offender’s probation violation itself is an objective and verifiable factor worthy of independent consideration.”). Therefore, the trial court articulated objective and verifiable factors that warranted the departure from the guidelines.

Affirmed.

/s/ Brian K. Zahra
/s/ Peter D. O’Connell
/s/ Karen M. Fort Hood

¹ Defendant contends that OV 3 (physical injury to victim) was not intended to apply to crimes against public order and, therefore, the fact that it may not have adequately accounted for the nature of the offense cannot be a basis for departure. Contrary to what defendant argues, MCL 777.22(4) clearly states that OV 3 is one of the offense variables to be scored for crimes against public order.