

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDDIE L. JAMES,

Defendant-Appellant.

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UNPUBLISHED

April 28, 2009

No. 282280

Wayne Circuit Court

LC No. 96-006986-FC

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Defendant appeals the sentences imposed on remand on his bench trial convictions of second-degree murder, MCL 750.317, four counts of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b.<sup>1</sup> We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises out of the fatal shooting of 11-year-old James White. There was a history of continuing arguments between defendant's family and members of the White family, and defendant and his brother had driven past the victim's home shooting guns in the air. On August 19, 1996, defendant, his brother, and two others ran through a field, shooting at Joseph White (the deceased's uncle) and three friends who were sitting on a porch. After the incident, James White was found fatally wounded in front of his house. Another victim, who was 15 years old, was wounded in the leg.

The trial court sentenced defendant to concurrent prison terms of 70 to 150 years for second-degree murder and two to four years for each felonious assault conviction, all running consecutive to a two-year term for felony-firearm. This Court affirmed defendant's convictions, but remanded to the trial court in order for the court to articulate the reasons for exceeding the guidelines' recommended minimum sentence range of 20 to 40 years for second-degree murder.<sup>2</sup>

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<sup>1</sup> Defendant was initially charged with first-degree murder, MCL 750.316, conspiracy to commit first-degree murder, MCL 750.157a, four counts of assault with intent to commit murder, MCL 750.83, and felony-firearm.

<sup>2</sup> *People v James*, unpublished per curiam opinion of the Court of Appeals, issued February 21, 2003 (Docket No. 236046).

On remand, defendant was again sentenced to 70 to 150 years' imprisonment for second-degree murder. The court sentenced defendant to time served for the remaining convictions.

Because this offense occurred before January 1, 1999, the judicial guidelines apply for sentencing purposes. MCL 769.34(1); *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000). We review a departure from the judicial sentencing guidelines for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). An abuse of discretion occurs if the sentence violates the principle of proportionality. *Id.*

Adherence to the judicial sentencing guidelines is not required. *Milbourn, supra* at 656-657. The principle of proportionality requires that sentences must be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Id.* at 636. Departures from the judicial guidelines "are appropriate where the guidelines do not adequately account for important factors legitimately considered at sentencing" or where the recommended range is disproportionate to the seriousness of the crime. *Id.* at 657. A trial court has "broad discretion, within limits fixed by law, to tailor a sentence to the circumstances of each case and each offender, in an effort to balance society's need for protection against its interest in rehabilitation of the offender." *People v Sabin (On Second Remand)*, 242 Mich App 656, 661; 620 NW2d 19 (2000). An upward departure may be justified by reference to factors that were considered by the variables but were deemed to be inadequately weighed. *People v Castillo*, 230 Mich App 442, 448; 584 NW2d 606 (1998). "The crucial test for proportionality is not whether the sentence departs from, or adheres to, the recommended range under the sentencing guidelines, but whether it reflects the seriousness of the matter." *Id.* at 447-448. However, "[e]ven where some departure appears to be appropriate, the extent of the departure (rather than the fact of the departure itself) may embody a violation of the principle of proportionality." *Milbourn, supra* at 660.

The trial court imposed the same sentence for second-degree murder for the following reasons: (1) the ages of the victims, (2) the cowardly nature of the assault, which occurred at night, (3) the viciousness of the assault, (4) the use of automatic and semiautomatic assault rifles, and (5) the relationship between the victim and defendant and the conspiracy among defendant and the other shooters. The court's reasons concern the nature and severity of the crime, "both of which are indisputably valid, indeed essential, sentencing considerations." *Castillo, supra* at 448, citing *People v Ross*, 145 Mich App 483, 495; 378 NW2d 517 (1985). In addition, many of the factors cited by the trial court could fairly be characterized as not being considered in the sentencing guidelines. For example, in *Milbourn*, the Court noted that a prior relationship between the victim and the defendant might be one important mitigating or aggravating factor not included in the sentencing factors. *Milbourn, supra* at 660-661. Also, as noted in *Castillo*, the "launching of a surprise attack" is not adequately considered in the guidelines. *Castillo, supra* at 449.

Defendant essentially argues that this Court should find that the sentence is disproportionate because it effectively results in a life sentence.<sup>3</sup> Defendant's sentence arguably

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<sup>3</sup> The Michigan Offender Tracking Information System indicates that defendant's earliest possible release date is September 13, 2057, which means that defendant will be 86 years old (continued...)

would have been improper under *People v Moore*, 432 Mich 311; 439 NW2d 684 (1989). However, in *People v Merriweather*, 447 Mich 799, 809-811; 527 NW2d 460 (1994), our Supreme Court, finding a sentence of 60 to 120 years proportionate and proper, implicitly overruled *Moore*, holding that an indeterminate sentence that falls within the permissible range of sentences for the offense at issue is lawful as long as it is proportional. See also *People v Lemons*, 454 Mich 234, 257-259; 562 NW2d 447 (1997) (upholding as proportionate the 60 to 90 year sentence of the 45-year-old defendant, finding that a trial court is not required to tailor a sentence in relationship to the defendant's age, and noting that *Moore* was decided before *Milbourn* and *Merriweather*, which now govern).

Under a general proportionality review, little other than the length of the sentence supports defendant's position that his sentence does not reflect the seriousness of the crime or the circumstances of the offender. Defendant killed the 11-year-old victim under circumstances that are virtually indistinguishable from premeditated murder. Mere serendipity limited the seriousness of the injury to the second victim; other individuals were also placed in danger by defendant's actions. Defendant's personal history provides little in the way of mitigating factors. He is, or was, a high school dropout. Defendant had three prior felonies and one misdemeanor at the time of the offense. The presentence investigation report (PSIR) reflects an abysmal prior probation and parole history, and defendant was on parole absconder status at the time of the instant offenses. The PSIR also notes that, as of June 7, 2007, defendant had nine misconducts in prison, including three substance abuse misconducts involving marijuana and alcohol.

In light of the circumstances of the offense, and the offender's obvious inability to conform his behavior to the rules of society, we cannot find that the trial court abused its discretion concerning the departure and the length of the departure.

Affirmed.

/s/ Stephen L. Borrello  
/s/ William B. Murphy  
/s/ Michael J. Kelly

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(...continued)

before he is eligible for parole.