

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM LEE LATHROP,

Defendant-Appellant.

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UNPUBLISHED

May 26, 2009

No. 284710

Muskegon Circuit Court

LC No. 05-051910-FC

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit murder, MCL 750.83. This Court affirmed his original sentence of 20 to 35 years in *People v Lathrop*, unpublished opinion per curiam of the Court of Appeals, issued August 21, 2007 (Docket No 268152). However, in *People v Lathrop*, 480 Mich 1036; 743 NW2d 565 (2008), our Supreme Court reversed and remanded to the trial court for resentencing, noting that Offense Variable (OV) 5, MCL 777.35, had been improperly scored, which affected the guidelines range, and the trial court had not stated that it would have imposed the same sentence regardless of the scoring error. See *People v Francisco*, 474 Mich 82; 711 NW2d 44 (2006). On remand, defendant was resentenced to a term of 17½ to 35 years in prison. Defendant again appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the trial court erred in departing from the revised sentencing guidelines range of 108 to 180 months, or nine to 15 years. In explaining the basis for the departure, the trial court noted that the assault occurred in front of young children; that defendant deliberately guided the knife through the victim's abdomen; and that defendant manipulated his wife (the victim) and children, and blamed them for his actions. Defendant maintains that the departure was not supported by substantial and compelling reasons.

In *People v Babcock*, 469 Mich 247, 257-258; 666 NW2d 231 (2003), quoting *People v Fields*, 448 Mich 58, 62, 67-68; 528 NW2d 176 (1995), our Supreme Court stated:

The phrase “substantial and compelling reason” has, in our judgment, acquired a peculiar and appropriate meaning in the law and, thus, it must be construed according to such meaning. That is, a “substantial and compelling reason” must be construed to mean an “objective and verifiable” reason that “‘keenly’ or

‘irresistibly’ grabs our attention”; is “of ‘considerable worth’ in deciding the length of a sentence”; and “exists only in exceptional cases.” *Fields, supra* at 62, 67-68.<sup>12</sup>

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<sup>12</sup>Although the trial court may depart from the guidelines range on the basis that a substantial and compelling reason to do so exists, the trial court “shall not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds . . . that the characteristic has been given inadequate or disproportionate weight.” MCL 769.34(3)(b). Therefore, if the seriousness of the defendant’s conduct and his criminal history have already been taken into account in determining the guidelines range, they cannot be used to justify the trial court’s departure, unless the trial court finds that these factors have been given inadequate or disproportionate weight. . . .

In *People v Uphaus*, 278 Mich App 174, 178-179; 748 NW2d 899 (2008), this Court stated:

In reviewing a trial court’s decision to depart from the sentencing guidelines, this Court reviews for clear error the trial court’s finding that a particular factor in support of departure exists. *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007). However, whether the factor is objective and verifiable is a question of law that this Court reviews de novo. *Id.* This Court reviews for an abuse of discretion the trial court’s determination that the objective and verifiable factors in a particular case constitute a substantial and compelling reason to depart from the sentencing guidelines. *Id.*

An abuse of discretion exists when the sentence imposed is not within the range of principled outcomes. *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008). In ascertaining whether the departure was proper, this Court must defer to the trial court’s direct knowledge of the facts and familiarity with the offender. *Babcock, supra* at 270.

Defendant asserts that the presence of young children did not keenly or irresistibly grab one’s attention, are not of considerable worth, and do not make this an exceptional case. We disagree. This was a brutal crime that took place in front of two of defendant’s children and a friend of one of the children. Defendant notes that only one child witnessed the stabbing, but fails to note that all three children witnessed the severe beating that led to the stabbing.

Regarding the way that the knife went through the victim’s abdomen, we note the victim’s testimony that defendant was aiming for her heart and that when he could not penetrate her breastplate, he stabbed her under the breastplate. Defendant argues that this fact was accounted for in the scoring of OV 1 (aggravated use of a weapon), MCL 777.31, OV 2 (lethal potential of a weapon), MCL 777.32, and OV 3 (degree of physical injury), MCL 777.33. However, defendant would have received the same scores for this crime, which involved the severe beating and ten other stab wounds to the chest and/or abdomen, regardless of this particular stab wound. Thus, these scores did not reflect this particularly brutal injury.

Finally, defendant argues that his attempt to persuade his family to pressure the victim to help him with the prosecutor was not a valid basis for departure because defendant's intent and the characterization that he was "manipulating" were not objective and verifiable factors. However, the witnesses testified that it happened, and the prosecutor played tapes of telephone calls substantiating their accounts. Although the characterization as manipulation may have been a subjective assessment, the facts themselves were not. Defendant also maintains that if his actions were manipulation, they would have been scored under OV 19 (security threats or interference with justice), MCL 777.49. However, it is undisputed that it was not scored. Thus, this behavior was not taken into account in the scoring of the guidelines.

Defendant next argues that he is entitled to an accurate presentence investigation report. A trial court's response to a claim of inaccuracies in a defendant's presentence investigation report is reviewed for an abuse of discretion. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003); see also *People v Norman*, 148 Mich App 273, 274-275; 384 NW2d 147 (1986) (a defendant has a right to have forwarded to the Department of Corrections an accurate presentence investigation report). Here, defendant does not identify an inaccuracy but objects to figure of speech. We find no abuse of discretion in failing to change the report.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot

/s/ Douglas B. Shapiro