STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 23, 2010
v	No. 284159 Macomb Circuit Court
GLORIA RENEE CURRIE, Defendant-Appellant.	LC No. 2006-004764-FH

Before: Shapiro, P.J., and Jansen and Beckering, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of first-degree child abuse, MCL 750.136b(2), and sentenced to concurrent prison terms of 10 to 15 years each. She now appeals as of right, and we affirm.

I. Underlying Facts

Defendant was convicted of seriously injuring her eight-week-old son in 2006. In addition to the victim's twin brother, defendant has seven other children ranging in age from 2 to 14 years. There have been neglect and abuse concerns with other children, and at the time of this incident, defendant's sister had custody of defendant's youngest daughter.

On the morning of September 3, 2006, defendant took the victim to the hospital for emergency treatment. After an extensive examination, the victim was found to be suffering from (1) a subdural hematoma near the front of his brain, (2) blood on the occipital part of his brain, (3) fractures of the back and side of his skull, (4) permanent blindness caused by severe brain injuries, (5) fractures of his right wrist, femur, tibia, clavicle, and fibula, (6) fractures of his left tibia, fibula, and clavicle, (7) six rib fractures on his right side, (8) a hip fracture, (9) severe anemia necessitating a blood transfusion, and (10) scratches on his nose and mouth.

Defendant initially reported to hospital personal and an Eastpointe police officer that she accidentally sat on the victim's leg. Subsequently, defendant altered her claim of how the victim was injured. She stated that she "pulled and yanked" on the victim's arms, deprived him of food, "tugged on both his legs," and struck him in the back of the head with her palm. Defendant explained that the victim cried uncontrollably, and that she became overwhelmed and frustrated.

Dr. Dena Nazar, who was qualified as an expert in child abuse, testified that all of the victim's injuries were "due to physical abuse." Dr. Nazar explained that the injuries had been inflicted at different times throughout the victim's eight-week life. She indicated that many of the victim's fractures and brain injuries had gone untreated for weeks. The victim's head injuries were "consistent with trauma or impact." The subdural hematoma was consistent with an "impact or shaking injury," while the skull fractures were consistent with "direct impact or direct force." Dr. Nazar characterized the victim's wrist injury as an "angulation" fracture typically caused by "tugging and twisting upwards toward the palm of the hand." The tibia and fibula fractures were the result of "forceful tugging." Dr. Nazar explained that the femur is "the strongest bone in the body," and that the fracture was the "direct result" of a "forceful blow" to the bone itself. She explained that the femur and clavicle fractures were new and that both were the type that typically result from "direct force or a direct blow." Dr. Nazar opined that the victim's rib fractures were caused by "direct squeezing."

Raquel Dean and Danielle Manigault, two of defendant's sisters, both testified for the prosecution that defendant is a poor parent who should not care for children.[1] With regard to the victim, Dean testified that defendant openly expressed dislike for him because "he looks like his father," and that defendant would "totally ignore" him.[2] Dean observed that, shortly before defendant took the victim to the hospital, the victim looked "like he was dying," because he was "so skinny" and "his face was sunk in, he had no hair, and had deep scratches around his nose" that "looked like someone took a nail clipper and was just nipping his nose." Dean applied Vaseline to the victim's scratches, but when she attempted to change his diaper, defendant called her "nosey" and told her "to leave him alone." Defendant did not allow Dean to take the victim home with her, and made her leave. Upon leaving, Dean immediately called Manigault, another sister, and their father, and told them that the victim would die if he did not get assistance.

A couple of days later, defendant called Manigault and told her that the victim's leg was broken and his hip was "displaced." Manigault, who had custody of defendant's youngest daughter because of abuse concerns, told defendant to take the victim to the hospital. Dean and Manigault testified that defendant was concerned about what "Social Services" would do to her. Eventually, Manigault threatened to call the police if defendant did not take the victim to the hospital. Manigault testified that when she later saw the victim at the hospital, "he was in a deplorable state" with "scratches all over his face, and all the way down to his chest," and he was in a body cast. Manigault testified that currently the victim's "skull is flat," he is legally blind, he does not speak, crawl, or walk, and he has to be taken to several specialists each month.

At trial, the defense argued that defendant was insane when she inflicted the victim's injuries, because she suffered from postpartum depression. Defendant presented an independent

[1] Dean explained that although family members assisted defendant in caring for the children, defendant refused to relinquish guardianship because she did not want to lose any welfare money she was receiving.

[2] Defendant also admitted her dislike of the victim to a psychologist who testified for the defense, as well as the prosecution's forensic examiner.

psychologist, who testified that defendant was mentally ill because she was suffering from postpartum depression.

II. Sufficiency of the Evidence

Defendant first argues that there was insufficient evidence to convict her of first-degree child abuse because there was no evidence of the requisite specific intent. We disagree.

When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id.* at 514. It is for the trier of fact to decide what inferences can be fairly drawn from the evidence and to determine the weight it will afford to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the [trier of fact's] verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

"A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child." MCL 750.136b(2). With regard to intent, the prosecution is required to establish beyond a reasonable doubt not only that the defendant intended to commit the charged act, but also that she intended to cause serious physical or serious mental harm to the child or knew that serious physical or serious mental harm would be caused by the act. *People v Maynor*, 470 Mich 289, 295; 683 NW2d 565 (2004). "An actor's intent may be inferred from all the facts and circumstances . . . and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

Viewed in a light most favorable to the prosecution, a rational trier of fact could have found the required intent for first-degree child abuse. Evidence was presented that the small, eight-week-old victim suffered severe brain injuries, a subdural hematoma, skull fractures, and severe anemia. He had multiple fractures throughout his body, including his ribs, hip, wrist, femur, tibias, and clavicles, and had extremely deep scratches on his nose and mouth. A medical expert testified that there was no innocent explanation for the victim's severe injuries. Rather, the victim's injuries were consistent with being shaken, receiving direct forceful impacts, being forcefully squeezed, and having certain extremities forcefully tugged. There was no dispute that the victim was in defendant's care when he was severely injured. The testimony showed that defendant expressed dislike for the victim because he looked like his father, while his twin brother did not. The evidence that the victim's twin brother suffered no injuries substantiates defendant's intent to injure the victim. In addition, the injuries were inflicted at different times throughout the victim's eight-week life. Defendant rejected assistance in caring for the victim from a family member, and did not immediately take him to a hospital. In fact, the testimony showed that defendant did not want to take the child to the hospital because she was afraid of being reported to child protective services, and only took him after a family member threatened to call the police. This evidence, viewed in a light most favorable to the prosecution, was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant

intended to seriously harm the eight-week-old victim or knew that her acts would cause serious harm.

Although defendant argues that she is not criminally responsible because she was legally insane, the evidence supports the trial court's rejection of an insanity defense.[3] An expert from the Center for Forensic Psychiatry evaluated defendant and opined that she was not mentally ill at the time she inflicted the victim's injuries. The expert testified that defendant has "a lot of psychological and emotional and behavioral problems," but "they did not meet the statute criteria for mental illness" and "were much more consistent with a character disorder." Further, on cross-examination, the defense expert acknowledged that the insanity statute was not completely satisfied here because defendant understood the wrongfulness of her actions. Also, defendant's sisters testified that defendant never exhibited any signs of mental illness. We conclude that the evidence was sufficient to sustain defendant's convictions of first-degree child abuse.

III. Great Weight of the Evidence

Defendant also argues that her conviction was contrary to the great weight of the evidence and that she should have been granted a new trial on this ground. We disagree. This Court reviews a trial court's decision denying a motion for a new trial for an abuse of discretion. *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008).

In evaluating whether a verdict is against the great weight of the evidence, the question is whether the evidence preponderates heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998). A verdict may be vacated only when it does not find reasonable support in the evidence, but is more likely to be attributed to causes outside the record such as passion, prejudice, sympathy, or some extraneous influence. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). Conflicting testimony and questions regarding the credibility of witnesses are not sufficient grounds for granting a new trial. *Lemmon*, 456 Mich at 643. Indeed, "unless it can be said that directly contradictory testimony was so far impeached that it 'was deprived of all probative value or that the jury could not believe it,' or contradicted indisputable physical facts or defied physical realities, the trial court must defer to the jury's determination." *Id*. at 644-646 (citation omitted).

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[3] The test for criminal insanity is set forth in MCL 768.21a(1), which provides in pertinent part:

> An individual is legally insane if, as a result of mental illness as defined in section 400a of the mental health code, . . . that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law." Mental illness . . . does not otherwise constitute a defense of legal insanity.

MCL 330.1400(g) defines "mental illness" as "a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life." "The defendant has the burden of proving the defense of insanity by a preponderance of the evidence." MCL 768.21a(3).

For the reasons discussed in part II, we conclude that the verdict was not against the great weight of the evidence. The evidence did not clearly preponderate so heavily against the verdict that a miscarriage of justice will result if the verdict is allowed to stand. *Id.* at 627; *Unger*, 278 Mich App at 232-233.

IV. Effective Assistance of Counsel

Defendant also argues that defense counsel was ineffective and that the trial court abused its discretion by denying her motion for a new trial on this ground. We disagree.

Whether defendant was denied the effective assistance of counsel is a mixed question of fact and constitutional law. We review the trial court's factual findings for clear error, and its constitutional determinations de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Effective assistance of counsel is presumed and a defendant bears a heavy burden of proving otherwise. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability that the result of the proceeding would have been different but for counsel's error. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007). A defendant must also overcome the presumption that the challenged action or inaction was sound trial strategy. *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996).

Defendant argues that trial counsel was ineffective for failing to consult with her about the case. At a *Ginther*[4] hearing, both defendant and trial counsel testified. Defendant testified that trial counsel never discussed the case with her, did not consider what witnesses she wanted to call, and only made two very brief visits to the jail. In contrast, trial counsel testified that he visited defendant in jail a total of three times, each time staying two to three hours, during which visits they "spent a great deal of time" discussing the case. In addition to the jail visits, he also discussed the case with defendant "several times" at pretrial conferences, in court "lock-up," and in the jury room. He explained that when there were pretrial proceedings, he would try to not schedule anything else so he could spend as much time as possible with defendant, because their meetings "were more fruitful . . . at the courthouse than [they] were in jail." According to trial counsel, they discussed the seriousness of the charges, the victim's injuries, potential theories, defenses, witnesses, defendant's constitutional right to testify, plea options, and the two experts' evaluations related to the defense of insanity.

In addition to trial counsel's testimony, other portions of the record also belie defendant's claim that trial counsel never conversed with her about the case. For example, at the pretrial hearing on the waiver of jury trial, the following exchange occurred:

Defense counsel: Ms. Currie, *we have discussed this at length*; is that right?

Defendant: *Yes*.

[4] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

Defense counsel: And do you understand that you have a right to a jury trial?

Defendant: Yes.

* * *

Defense counsel: Ms. Currie, *as I explained to you at the jail, as I've explained to you on all other occasions,* when we decided we were going to seek a bench trial, you understand that [the trial judge] will not only be the trier of fact and he will be determining the evidence in this case, he's going to be the one that's going to sentence you in this case, too, do you understand?

Defendant: Yes, I understand.

Defense counsel: Okay, you clearly understand. Do you have any questions of me?

Defendant: No.

* * *

Defense counsel: Ms. Currie, you understand that there were extensive plea negotiations in this case, right?

Defendant: Yes.

Defense counsel: *We discussed everything that occurred during those plea negations?*

Defendant: Yes.

* * *

Defense counsel: Is there anything unclear in your mind?

Defendant: No.

Defense counsel: *Have I explained everything to you to the best of my ability?*

Defendant: Yes, you did. [Emphasis added.]

Thus, as the trial court determined, there is no merit to defendant's claim that trial counsel failed to consult with her about the case.

Next, defendant asserts that trial counsel was ineffective by depriving her of her right to testify. At the hearing, defendant testified that she advised trial counsel that she wanted to testify at trial. In contrast, trial counsel testified that defendant never told him that she wanted to testify. Counsel also testified that although he believed defendant's testimony would be damaging, he

"would have had to allow her" to testify if requested. Trial counsel explained that he and defendant discussed whether defendant would testify several times, and that "together" they made the decision that she would not testify. He further explained that as a matter of trial strategy, he had opined that defendant should not testify because she has "anger issues," is a "loose cannon," and because her "story vacillated from one extreme to another."

This issue involves a question of credibility, and the trial court found trial counsel's testimony to be more credible. Recognizing the superior ability of the trial court to judge the credibility of witnesses who appear before it at a *Ginther* hearing, we defer to the trial court's conclusion that trial counsel's version of events was more believable, that defense counsel discussed the matter with defendant, and that defendant did not request to testify. See MCR 2.613(C); *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999) (observing that a court's "resolution of a factual issue is entitled to deference," especially where it "involves the credibility of witnesses whose testimony is in conflict"). Accepting trial counsel's testimony as true, defendant never informed trial counsel that she wanted to testify. Further, decisions about defense strategy, including what witnesses to present, are matters of trial strategy, which this Court will not second-guess with the benefit of hindsight. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). Lastly, as noted by the trial court, defendant failed to establish a reasonable likelihood that she would not have been convicted had she testified.[5] *Frazier*, 478 Mich at 243. Consequently, defendant has not established that trial counsel was ineffective for failing to call her to testify.

Defendant also asserts that trial counsel was ineffective because he failed to prepare for trial by interviewing potential defense witnesses to develop a strategy, and instead decided to "'roll the dice' on the remote defense of insanity." At the hearing, defendant testified that trial counsel did not consider that she wanted to call her parents and two older children, who would have testified that she had appropriately "take[n] care of them, and how sick they seen [sic] their mother." Trial counsel testified that in preparation for trial, he met with several family members suggested by defendant. He explained that he did not call any of them because "they were not sympathetic to Ms. Currie at all regarding this case." He further explained that defendant's father "seemed to vacillate between being sympathetic to her and being antagonistic toward her," so he was unsure of how he would testify. After learning that there were no supportive family members, counsel "developed a possible insanity defense." He believed it was a viable defense based on defendant's actions of inflicting the injuries, "what he was seeing, especially in [his] meetings with her," and their expert witness. In establishing the insanity defense, trial counsel reviewed the relevant law, contacted the defense expert and provided him with relevant documents, and arranged for him to examine defendant. Also, in general preparation for trial, trial counsel read the police reports, read through "thousands" of medical records, spoke with doctors and defendant's "neglect" attorney, and discussed strategies with defendant's first appointed trial attorney.

[5] Indeed, the court noted that "it is conceivable that had [defendant] been so allowed to [testify], the outcome may have been more detrimental, given what the Court is advised as Defendant's 'explosive nature.'"

The record supports trial counsel's testimony that he was prepared for trial, that he vigorously presented the defense of insanity, and that defendant's family members did not support her. Under the circumstances, we conclude that trial counsel's decision to pursue an insanity defense, and to not present the vacillating or potentially damaging testimony of certain family members, was not below an objective standard of reasonableness and fell squarely within the confines of appropriate trial strategy. "The fact that defense counsel's strategy may not have worked does not constitute ineffective assistance of counsel." *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). Moreover, the evidence in this case was compelling, and defendant has failed to demonstrate that there is a reasonable probability that, but for counsel's failure to call defendant's parents and two older children, the result of the proceedings would have been different.

Nor does the record support defendant's claim that trial counsel was ineffective for failing to allow her to review the presentence report before sentencing. Trial counsel testified that he thoroughly reviewed the report with defendant at the jail. Trial counsel's testimony is corroborated by the record at sentencing. In the presence of defendant, trial counsel informed the court that he "spoke with Miss Currie about [the PSIR], it appears to be accurate and correct." Shortly thereafter, trial counsel again stated:

> [Y]our Honor, I would add that I did have an opportunity to review the report with Miss Currie as to those allegations in the report that were there prior, everything appears to be correct. There are no additions, deletions or corrections we would want to make in the report.

Further, when given the opportunity to address the court before the imposition of sentence, defendant gave no indication that she had not seen or reviewed the report. Consequently, defendant cannot establish a claim of ineffective assistance of counsel on this basis.

We also reject defendant's argument that trial counsel was ineffective for failing to object to inaccuracies in the PSIR. Defendant claims that the report inaccurately stated that her parents and siblings provided her with financial support. Trial counsel testified that defendant told him that her father and siblings had assisted her, but he also noted that the information was not relevant to sentencing. At trial, two of defendant's sisters testified that defendant's parents and siblings helped her financially, that she lived with her parents at times, that the siblings cared for the children at times, and that their father was "a walking ATM." Defendant also challenges the statement that she was not suffering from postpartum depression. Defense counsel acknowledged that he did not agree with that assessment, but did not recall if he objected. At trial, however, an expert specifically testified that defendant did not suffer from postpartum depression. Defendant further challenges the indication that she admitted harming the victim in various ways. Trial counsel noted that defendant "did not deny that to [him]." At trial, there was evidence that defendant admitted to hospital personnel, an Eastpointe police officer, the forensic examiner, and a defense psychologist that she had harmed the victim. Defendant challenges the indication that she did not ask about her children, and that there were accounts by other people that defendant had abused them. Trial counsel noted that defendant cared about her children, that they did not discuss other claims of abuse, and that he did not recall if he objected to that information in the report. But at trial, there was testimony that defendant had abused and neglected some of her other children, that defendant had failed to send the older children to

school, and that her sister had custody of defendant's youngest daughter because of neglect and abuse concerns.

In sum, defendant's claim of inaccurate information is primarily based on her disagreement with evidence that was introduced at trial. Because there was no basis for trial counsel to object, defendant cannot establish a claim of ineffective assistance of counsel in this regard. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000) (noting that counsel is not required to make a futile objection).

For these reasons, the trial court did not abuse its discretion by denying defendant's motion for a new trial on the basis of ineffective assistance of counsel.

V. Sentence

Defendant argues that she is entitled to be resentenced because of errors that occurred at sentencing. We disagree.

Defendant first argues that resentencing is required because the trial court erroneously scored offense variables (OVs) 1, 2, 12, and 13 of the sentencing guidelines. We disagree. "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). Facts used in the scoring of a sentencing factor need only be proven by a preponderance of the evidence. *People v Drohan*, 475 Mich 140, 142-143; 715 NW2d 778 (2006); *People v Harris*, 190 Mich App 652, 663; 476 NW2d 767 (1991).

The trial court scored 25 points for OV 1 (aggravated use of a weapon), MCL 777.31(1)(a), five points for OV 2 (lethal potential of weapon), MCL 777.32(1)(d), 25 points for OV 12 (contemporaneous criminal acts), MCL 777.42(1)(a), and 25 points for OV 13 (continuing pattern of criminal behavior), MCL 777.43(1)(b). Defendant argues that all four variables should have been scored at zero points because there was " no evidence" to support the scores. Even if the trial court erred by scoring the four variables, however, resentencing is not required. If OV 1, OV 2, OV 12, and OV 13 had all been scored at zero, defendant's total OV score would have decreased from 165 to 85 points. Even with this scoring adjustment, however, defendant would remain in the same OV level VI (75 or more points), and her guidelines range would not change (57 to 95 months). MCL 777.63. Accordingly, because the alleged scoring errors do not affect the appropriate guidelines range, defendant is not entitled to resentencing. *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006).

Defendant also argues that she is entitled to be resentenced because the trial court did not articulate a substantial and compelling reason for exceeding the minimum guidelines range of 57 to 95 months. A trial court must ordinarily impose a minimum sentence within the guidelines range. MCL 769.34(2) and (3); *People v Babcock*, 469 Mich 247, 272; 666 NW2d 231 (2003). A court may depart from the appropriate guidelines range only if it "has a substantial and compelling reason for th[e] departure and states on the record the reasons for departure." MCL 769.34(3). A court may not depart from the guidelines range based on an offense or offender characteristic already considered in determining the guidelines range unless the court finds, based on facts in the court record, that the characteristic was given inadequate or disproportionate weight. MCL 769.34(3)(b). We acknowledge that the phrase "substantial and

compelling" constitutes strong language intended to apply only in "exceptional cases." *Babcock*, 469 Mich at 257-258. Thus, the reasons justifying departure should "keenly and irresistibly grab" the court's attention and be recognized as having "considerable worth" in determining the length of a sentence. *Id.* Only objective and verifiable factors may be used to assess whether there are substantial and compelling reasons to deviate from the guidelines range. *Id.* at 257, 273. Further, a departure from the guidelines range must render the sentence proportionate to the seriousness of the defendant's conduct and her criminal history. *People v Smith*, 482 Mich 292, 300, 305; 754 NW2d 284 (2008).

Whether a factor exists is reviewed for clear error on appeal. *Babcock*, 469 Mich at 265, 273. Whether a factor is objective and verifiable is subject to de novo review. *Id.* The trial court's determination that objective and verifiable factors constitute a substantial and compelling reason to depart from the minimum sentence range is reviewed for an abuse of discretion, as is the extent of the departure. *Id.* at 265, 274; see also *Smith*, 482 Mich at 300.

As an initial matter, we agree with defendant that one of the trial court's articulated reasons for departure—namely, that defendant has nine children by six different men—was not a proper basis for departure. This factor, standing alone, would not provide a proper basis for departing from the sentencing guidelines range. But the trial court relied on other factors that are objective and verifiable, and the court did not abuse its discretion by finding that these other factors amounted to substantial and compelling reasons to depart from the sentencing guidelines range.

The trial court did not err by finding that the offense characteristics unique to this first-degree child abuse offense were not adequately reflected in the scoring of the guidelines. The factors did not adequately account for the fact that despite the victim's severe injuries, defendant "had to be convinced and talked into taking her infant baby to the hospital or else her sister would have called the police." In addition, the court noted that during allocution, defendant continued to "not tak[e] blame for her actions," but blamed her attorney and the lack of a fair trial for her conviction. Although a trial court cannot base its sentence on a defendant's refusal to admit guilt, *People v Yennior*, 399 Mich 892; 282 NW2d 920 (1977), other factors, such as a defendant's potential for rehabilitation, may be considered, *People v Spanke*, 254 Mich App 642, 650; 658 NW2d 504 (2003). The court specifically noted in determining defendant's sentence that it had considered her potential for rehabilitation.

Also, as noted by the trial court, the factors did not adequately account for the enduring and devastating consequences of defendant's actions on all of her children. The court found that given the facts and circumstances of this case, a greater sentence was appropriate for the protection of defendant's children. It further pointed to the evidence that defendant had declined family members' offers to take the children because she did not want to lose financial assistance from the state. A trial court's general conclusion that a defendant is a danger is not, itself, an objective and verifiable factor. See *People v Solmonson*, 261 Mich App 657, 670; 683 NW2d 761 (2004). Here, however, the trial court based its finding on specific objective circumstances surrounding defendant's prior history with her children and her actions toward the victim. The

facts on which the trial court relied for its conclusion that defendant would be a continuing threat to her children were external to the court's mind and were capable of being confirmed. The trial court did not abuse its discretion by concluding that the guidelines inadequately accounted for the circumstances of the offense in this case.[6]

Even when a departure is warranted, "a trial court must justify why it chose the particular degree of departure." *Smith*, 482 Mich at 318. The trial court expressly acknowledged that it was required to impose a sentence that was proportional to the offense and the offender. It gave valid reasons for a departure, and noted that defendant's total OV score was well in excess of the maximum necessary for placement in the highest OV level of severity. The court explained its position and accurately referred to facts in the record, concluding that the imposed sentence would be more proportionate than one within the guidelines given the circumstances of the crime. We cannot conclude that the extent of the departure resulted in a disproportionate sentence or that the trial court abused its discretion in this regard.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Kathleen Jansen
/s/ Jane M. Beckering

[6] Although we have concluded that one of the reasons articulated by the trial court is not substantial and compelling, remand for resentencing is unnecessary. If a trial court articulates multiple reasons for a departure, and an appellate court determines that some of the reasons are invalid, the appellate court must determine whether the trial court would have departed, and would have departed to the same degree, on the basis of the valid reasons alone. *Babcock*, 469 Mich at 260. If that determination cannot be made, remand for rearticulation or resentencing is necessary. *Id.* at 260-261. Here, having thoroughly reviewed the record and scrutinized the sentencing transcript, we are satisfied that the trial court would have imposed the same sentence on the basis of the valid factors alone.