

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD EUGENE MOYER, JR.,

Defendant-Appellant.

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UNPUBLISHED

July 15, 2010

No. 291606

Berrien Circuit Court

LC No. 2006-411480-FC

Before: HOEKSTRA, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree criminal sexual conduct, MCL 750.502b(1)(a) (victim under the age of 13). This Court affirmed defendant's convictions, but remanded for resentencing under the judicial sentencing guidelines.<sup>1</sup> On remand, the trial court sentenced defendant to concurrent prison terms of 120 to 900 months. Defendant appeals as of right his sentences. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Because defendant committed the offenses before January 1, 1999, the judicial sentencing guidelines apply. MCL 769.34(2); *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000). The recommended minimum sentence range under the judicial guidelines was 36 to 96 months' imprisonment. However, the trial court found that the guidelines range was disproportionate to the seriousness of defendant's offenses, and departed upwards by imposing minimum sentences of 120 months.

On appeal, defendant claims that the trial court failed to articulate sufficient reasons for the upward departure and that his sentences are disproportionate to the offenses and the offender. We disagree. Under the judicial sentencing guidelines, sentencing matters are reviewed for an abuse of discretion. *People v Castillo*, 230 Mich App 442, 447; 584 NW2d 606 (1998).

A sentence must be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

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<sup>1</sup> *People v Moyer*, unpublished opinion per curiam of the Court of Appeals, issued December 18, 2008 (Docket No. 279915).

Departures from the judicial guidelines range are permitted, *People v Hegwood*, 465 Mich 432, 440; 636 NW2d 127 (2001), such as where the guidelines range is disproportionate to the seriousness of the crime, *Milbourn*, 435 Mich at 657, 661. “[A] deviation from the guidelines range may be based on factors already considered in the guidelines calculations but such a deviation must be made with caution.” *People v Rockett*, 237 Mich App 74, 79; 601 NW2d 887 (1999). If a sentence falls outside the guidelines range, the sentencing court must explain the reason for its departure. *People v Kowalski*, 236 Mich App 470, 473; 601 NW2d 122 (1999).

In determining that the recommended guidelines range was disproportionate, the trial court relied on the impact statement from the victim, defendant’s stepsister, and found that defendant’s conduct had robbed her of her ability to be a sexually healthy adult and had caused her to suffer paranoia involving the safety of her children. The trial court reasoned that the guidelines gave insufficient weight to the seriousness of defendant’s conduct where his conduct had caused a long-lasting impact on the victim’s psychological health and had a ripple effect on the victim’s children.

The trial court also considered two unrelated charges of second-degree criminal sexual conduct, MCL 750.520c(1)(a), against defendant involving a nine-year-old girl. Although these charges were later dismissed, the girl testified at length during the preliminary examination, and indicated on a diagram how defendant had penetrated her vagina with his fingers. We find that the trial court had sufficient evidence from which to conclude that defendant committed these assaults. See *People v Harris*, 190 Mich App 652, 663; 476 NW2d 767 (1991). The trial court properly found that the upward departure more proportionately reflected defendant’s continued danger to the children of the community. See *People v Miller*, 165 Mich App 32, 51; 418 NW2d 668 (1987), remanded on other grounds 434 Mich 915 (1990).

Based on the above factors the trial court found that the recommended guidelines range was disproportionate. This decision did not constitute an abuse of discretion. *Castillo*, 230 Mich App at 447. The trial court acted within its discretion when it found that the judicial guidelines failed to accurately consider the impact of defendant’s actions on the victim and his other acts of sexual misconduct. *Milbourn*, 435 Mich at 661 (“[T]rial judges shall remain entitled to depart from the guidelines if the recommended ranges are considered an inadequate reflection of the proportional seriousness of the matter at hand.”). Therefore, defendant has not shown that his sentences are disproportionate.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Kathleen Jansen  
/s/ Jane M. Beckering