

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALSTAIR ALEXANDER RICHARDSON,

Defendant-Appellant.

UNPUBLISHED

August 10, 2010

No. 289067

Wayne Circuit Court

LC No. 08-008157-FH

Before: MARKEY, P.J., and ZAHRA and GLEICHER, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions for two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(d) and MCL 750.520b(1)(f). Defendant was sentenced to 7 ½ to 35 years' imprisonment for each first-degree criminal sexual conduct conviction. We affirm.

Defendant's only issue on appeal is that the trial court failed to both articulate a substantial and compelling reason for the extent of the upward departure of his minimum sentence from the sentencing guidelines range, and explain how the sentence was proportionate; thus defendant deserved to be resentenced. We disagree.

A trial court's decision to depart from the sentencing guidelines is reviewed for an abuse of discretion. *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008). An abuse of discretion occurs when a trial court chooses a minimum sentence that is outside the range of reasonable and principled outcomes. *Id.* The existence of a particular factor supporting a trial court's decision to depart from the sentencing guidelines is reviewed for clear error, and the conclusion of whether a reason is objective and verifiable is reviewed de novo. *Id.*

MCL 769.34(2) provides that a trial court must impose a minimum sentence within the sentencing guidelines range unless a departure from the guidelines is permitted. The trial court may only depart from the sentencing guidelines if it has substantial and compelling reasons to do so, and it states the reasons on the record. MCL 769.34(3); *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). The court may depart from the recommended guidelines range for nondiscriminatory reasons where there are legitimate factors not considered by the guidelines, or where factors considered by the guidelines have been given inadequate or disproportionate weight. MCL 769.34(3)(a) and (b); *Abramski*, 257 Mich App at 74. Substantial and compelling reasons for departure exist only in exceptional cases. *People v Babcock*, 469

Mich 247, 257-258; 666 NW2d 231 (2003). In determining whether there is a sufficient basis to justify departure, the principle of proportionality defines the “standard against which the allegedly substantial and compelling reasons in support of departure are to be assessed.” *Id.* at 262. “For a departure to be justified, the minimum sentence imposed must be proportionate to the defendant’s conduct and prior criminal history.” *Smith*, 482 Mich at 300.

Additionally, the trial court’s reasons for departing from the guidelines range must be objective and verifiable. *Abramski*, 257 Mich App at 74. To be objective and verifiable, “the facts to be considered by the court must be 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.” *Id.* The objective and verifiable facts “must be of considerable worth in determining the length of the sentence and should keenly or irresistibly grab the court’s attention.” *Smith*, 482 Mich at 299. The trial court may draw inferences from the objective evidence. *People v Petri*, 279 Mich App 407, 422; 760 NW2d 882 (2008).

In this case, defendant’s minimum sentence guidelines range was 27 to 45 months. The trial court departed by sentencing defendant to a minimum term of 90 months, or 7 ½ years. In articulating its reasons for this departure, the trial court emphasized that defendant took advantage of the fact that he was welcomed into the victim’s home as a trusted friend. The court also stated that defendant took advantage of a victim who was heavily medicated for pain. The trial court also relied on the fact that Weston King, Jr. was aware that the victim was being hurt, has severe emotional problems from the assault, and all of the victim’s children will remember the incident’s occurring at the house. It stated that defendant committed this sex crime in a friend’s home where he knew all the people, and he knew where the children were sleeping.

The trial court also articulated the following facts in support of departing from the guidelines:

Particularly the fact that this traumatized of all the children in that home, including the little boy who ran and screamed to his dad; they are hurting mom. Those children will never get over this. Never. The father will never get over this. And I don’t think these kinds of things are taken into account in the guidelines. Yeah, they’ve got something for psychiatric. But not the level that this is.

. . . This is not just bad. It was not just, a lapse in judgment. This was pure evil to think that you could go into a woman’s house, and with her husband and children present, do whatever you wanted to, to her body. Pure evil. . . . I don’t think that a sentence ought to be something that would cause this victim to be laughed at for the rest of her life. And 45 months in prison is laughable for what was done to her, and the circumstances under which it was done.

* * *

I am so disgusted by your behavior that I think you need to go away for enough time to demonstrate to you and the rest of the community, you don’t do this to a woman. You don’t do this to your friend.

The trial court articulated the reasons why it found it necessary to depart from the statutory guidelines. The trial court stated that the guidelines did not account for the high level of psychiatric trauma defendant caused to Weston King, Sr. and the five children. King testified that he could no longer enter or sleep in his bedroom. Defendant was a friend who took advantage of this family's trust and the victim's helplessness inside the family home with the entire family present. These facts are substantial and compelling reasons that highlight the proportionality of defendant's minimum sentence.

The trial court's reasons are also objective and verifiable. The evidence presented during trial confirmed all the facts the trial court articulated for departing from the statutory guidelines. Further, those facts were external to the mind of the judge, defendant, and prosecution because they came from the trial testimony and evidence. The reasons for departing from the guidelines keenly and irresistibly grabbed the trial court's attention because the trial court found the circumstances of the assault exceptional. The court relied on the fact that defendant was welcomed into the family home and then took advantage of the family's trust. The trial court also cited that defendant's crime caused lasting psychiatric trauma on the victim's family. Thus, the trial court did not abuse its discretion by imposing a proportionate sentence that was above the guidelines recommended range.

We affirm.

/s/ Jane E. Markey