

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
January 21, 2016

v

CHARLES GERRON, JR.,
Defendant-Appellant.

No. 323761
Kent Circuit Court
LC No. 11-006721-FC

Before: BECKERING, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

Defendant, Charles Gerron, Jr., appeals by right the sentence imposed by the trial court after a remand from this Court for resentencing. For the reasons more fully explained below, we elect to again remand this case to the trial court for further proceedings.

A jury convicted Gerron of armed robbery, MCL 750.529; conspiracy to commit armed robbery, MCL 750.157a; first-degree home invasion, MCL 750.110a(2); assault with intent to do great bodily harm less than murder, MCL 750.84; and possession of a firearm during the commission of a felony, MCL 750.227b. At Gerron’s original sentencing, the trial court elected to depart from the recommended minimum guidelines range of 81 to 135 months for the armed robbery charge and sentenced Gerron to serve 15 to 40 years in prison. Gerron appealed and this Court determined that one of the trial court’s two articulated reasons for departure was not substantial and compelling. Accordingly, we vacated Gerron’s sentence and remanded for resentencing. See *People v Gerron*, unpublished opinion per curiam of the Court of Appeals, issued December 19, 2013 (Docket No. 312564). At resentencing, the trial court again exceeded the recommended range and sentenced Gerron to serve 14 to 40 years in prison for his armed robbery conviction. The court explained that the primary reason for its original departure was the egregious nature of the assault—a reason that this Court already determined was substantial and compelling.

Gerron’s sole argument on appeal is that the trial court’s departure at resentencing was improper. This Court no longer reviews a departure from the applicable guidelines range for substantial and compelling reasons in support of the departure; this Court reviews a departure for reasonableness. See *People v Lockridge*, 498 Mich 358, 391-392; 870 NW2d 502 (2015). When reviewing a departure after the decision in *Lockridge*, this Court examines the reasons articulated by the trial court for the departure and determines whether the trial court abused its discretion by

departing; a trial court abuses its discretion to depart when the departure violates the principle that the sentence should be proportionate to the offender and offense. See *People v Steanhouse*, ___ Mich App ___; ___ NW2d ___ (Docket No. 318329); slip op at 23-24.

To the extent that Gerron challenges the trial court's reason for departing under the then-mandatory legislative guidelines, the law of the case doctrine precludes appellate review of this issue. See *People v Phillips*, 227 Mich App 28, 31; 575 NW2d 784 (1997). Nevertheless, Gerron also argues that his sentence was disproportionate. Under the new standard of review, "[a] sentence that fulfills the principle of proportionality under [*People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990)] and its progeny constitutes a reasonable sentence under *Lockridge*." *Steanhouse*, ___ Mich App at ___; slip op at 24. Specifically, under *Milbourn*, the principle of proportionality assures that a defendant's sentence is proportionate in light of the background of the offender and the nature of the offense involved. See *Milbourn*, 435 Mich at 651.

In this case, Gerron claims that the extent of the trial court's departure from the guidelines was not proportionate. He raises this argument particularly in light of the sentence his codefendant, Shawn Murphy, received, which was 7-1/2 years to 25 years in prison for his armed robbery conviction.¹ On the record before us, we elect to exercise our discretion to afford different relief as the case may require. MCR 7.216(A)(7). The trial court was not aware that it had broad discretion to fashion a sentence that was proportionate to this offender and this offense; instead, it operated under the assumption that it could only depart for substantial and compelling reasons. Had the trial court had the benefit of the recent decisions governing sentencing, it might have sentenced Gerron differently. For that reason, we elect to follow the procedure stated in *Steanhouse*, ___ Mich App at ___; slip op at 25, and order a *Crosby*² remand:

[O]n a *Crosby* remand, a trial court should first allow a defendant an opportunity to inform the court that he or she will not seek resentencing. If notification is not received in a timely manner, the court (1) should obtain the views of counsel in some form, (2) may but is not required to hold a hearing on the matter, and (3) need not have the defendant present when it decides whether to resentence the defendant, but (4) must have the defendant present, as required by [MCR 6.425], if it decides to resentence the defendant. Further, in determining whether the court would have imposed a materially different sentence but for the unconstitutional constraint, the court should consider only the circumstances existing at the time of the original sentence. [*Lockridge*, 498 Mich at 398 (quotations and citations omitted).]

¹ The lower court record does not indicate the reason for Murphy's sentence; however, it is evident that Murphy pleaded no contest to armed robbery.

² *United States v Crosby*, 397 F3d 103 (CA 2, 2005).

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly