

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORDARELL ISIAH SIMS,

Defendant-Appellant.

UNPUBLISHED

July 31, 2012

No. 292529

Macomb Circuit Court

LC No. 2008-0007891-FC

ON REMAND

Before: WILDER, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

This case is before us for the second time and the underlying facts of this case are available in our previous opinion, *People v Sims (Sims I)*, unpublished opinion per curiam of the Court of Appeals, issued February 15, 2011 (Docket No. 292529). In our initial opinion, we affirmed the defendant's convictions, which he did not challenge, but because defendant's sentences were influenced by inaccurate scoring of the guidelines, we remanded for resentencing. As the case was remanded for resentencing, we declined to address defendant's argument that the trial court's decision to give him minimum sentences at the high end of the guidelines range for his convictions of both first-degree home invasion and conspiracy, combined with the order that defendant serve these sentences consecutively, resulted in cumulative sentences that were disproportional. However, the Supreme Court remanded this case for us to decide this previously unaddressed issue.¹ We now affirm.

Defendant was charged with multiple offenses, all of which arose out of a single home invasion. He pleaded guilty to home invasion, conspiracy to commit home invasion, and assault with intent to do great bodily harm. He was sentenced to 140 months (the guideline maximum) to 240 months on the home invasion charge. Because the defendant was convicted of home

¹ Specifically, the Supreme Court initially reversed in part this Court in *People v Sims*, 489 Mich 970; 798 NW2d 796 (2011) and on reconsideration modified its order to include a remand to this Court to consider the unaddressed issue from the original appeal, *People v Sims*, 490 Mich 857; 802 NW2d 64 (2011).

invasion, the trial court had the discretion to impose the other sentences concurrent with or consecutive to the home invasion sentence. The trial court elected to impose a consecutive sentence of 140 months to 240 months for the conspiracy conviction and a sentence of 67 months to 120 months for the assault conviction to be served concurrent to the conspiracy sentence, but consecutive to the home invasion sentence.

Defendant filed a post-sentencing motion to withdraw his guilty plea on the grounds that he was not made aware that the court could impose consecutive sentences. The trial court denied that motion, along with defendant's motion for resentencing. Defendant appealed only from the sentences themselves and did not appeal the denial of his motion to withdraw his plea.

The presentence report made no recommendation whether concurrent or consecutive sentences should be imposed. At the sentencing hearing, the subject of consecutive sentencing was not raised by either attorney. Defense counsel requested a sentence in the "middle of the guidelines." The prosecutor stated that in his view "the top of the guidelines are an appropriate sentence." The trial court then announced each of the sentences and concluded by stating that the sentence for home invasion would "run consecutively" to the other two. Defense counsel then asked, "You are not going to allow concurrent sentencing, your Honor [?]" The court responded, "I am very tempted to exceed the guidelines on this case because it cries out, it grabs your attention in this case. Instead I decided to run those two sentences consecutively."

We find no error in the trial court's decision because consecutive sentences were statutorily authorized, the sentences themselves were proportional, and the sentences resulted from a proper exercise of the trial court's discretion. A trial court's imposition of a particular sentence is reviewed on appeal for an abuse of discretion, which will be found when the sentence imposed does not reasonably reflect the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Notably, defendant does not argue that the trial court abused its discretion in imposing consecutive sentences. Instead, defendant argues that because he was sentenced consecutively rather than concurrently, the *combination* of his sentences at the high end of the guidelines range renders the result disproportionate.

Defendant's argument, that the cumulative nature of the sentences somehow affects the sentences' proportionality, is misplaced. "In determining the proportionality of an individual sentence, this Court is not required to consider the cumulative length of consecutive sentences." *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998), citing *People v Miles*, 454 Mich 90, 95; 559 NW2d 299 (1997). Instead this Court's analysis is confined to determine "whether *each* sentence is proportionate." *St John*, 230 Mich App at 649 (emphasis added).

There is no dispute that, while the minimum sentences for both the home invasion and conspiracy convictions were at the high end of the recommended sentencing guidelines ranges, the sentences were in fact within the guidelines. When the minimum sentence imposed is within the guidelines range, this Court must affirm and may not remand for resentencing absent an error in the scoring of the guidelines or reliance on inaccurate information in determining the defendant's sentence. MCL 769.34(10); *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000). Similarly, "this Court may not consider challenges to a sentence based exclusively on proportionality, if the sentence falls within the guidelines." *People v Pratt*, 254 Mich App

425, 429-430; 656 NW2d 866 (2002). Accordingly, because the sentences for home invasion and conspiracy are within the guidelines ranges, those sentences are not subject to general proportionality challenges.

In addition, there is also no dispute that the trial court was statutorily authorized to order defendant's sentences to run consecutively. See MCL 750.110a(8) (authorizing "a term of imprisonment imposed for home invasion in the first degree to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction"). And, as plaintiff points out, the statute authorizing consecutive sentencing in these circumstances places no limits on the trial court's discretion. See MCL 750.110a(8). That first-degree home invasion was selected as one of the exceptional situations where consecutive sentencing may be imposed indicates the obvious legislative determination that a first-degree home invasion coupled with other criminal indignities has a special tendency to offend, frighten, or otherwise harm its victims. In this case, the victims suffered not just the violent and threatening intrusion into their home, but the adult victim endured a severe battery while the child victims witnessed the beating of their mother. These facts thus present the sort of heightened victimization that the Legislature sought to address through the device of consecutive sentencing. Thus, the trial court's exercise of its discretion did not bring about a sentence that failed reasonably to reflect the seriousness of the circumstances surrounding the offense and the offender. *Milbourn*, 435 Mich at 636. The fact that the trial court ordered these otherwise proportional sentences to be served consecutively does not render them disproportionate in the aggregate. See *St John*, 230 Mich App at 649.

Finally, the trial court stated sufficient reasons to support its decision to give defendant consecutive rather than concurrent sentences. As is the case with all sentencing, "[a] trial court must articulate its reasoning for imposing a sentence on the record at the time of sentencing." *People v Conley*, 270 Mich App 301, 312-313; 715 NW2d 377 (2006). However, "[t]he articulation requirement is satisfied if the trial court expressly relies on the sentencing guidelines in imposing the sentence or if it is clear from the context of the remarks preceding the sentence that the trial court relied on the sentencing guidelines." *Id.* at 313. Here, the trial court expressly stated that, while it was "tempted to exceed the guidelines" given the attention-grabbing nature of the case, it instead would sentence the defendant within the recommended guideline ranges. Therefore, by expressly sentencing defendant within the guidelines on each conviction, the trial court satisfied the articulation requirement.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Deborah A. Servitto