

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ALOYSIUS SKUBE,

Defendant-Appellant.

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UNPUBLISHED

March 17, 1998

No. 194982

Macomb Circuit Court

LC No. 92-001516 FC

Before: Cavanagh, P.J., and White and Young, Jr., JJ.

PER CURIAM.

This appeal as of right returns to this Court after remand. In a prior appeal, this Court affirmed defendant's jury convictions of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), but remanded to the trial court for articulation of the reasons for imposing a life sentence on the murder conviction, which was a departure from the recommended guidelines range of five to fifteen years. *People v Skube*, unpublished opinion per curiam of the Court of Appeals, issued June 13, 1995 (Docket No. 165278).

On remand, the trial court stated that a departure from the recommended guidelines range was appropriate because (1) defendant "callously murdered the victim with the rifle within the range of witnesses," (2) the slaying took place on a residential street in front of several witnesses, including some young boys who were playing across the street, (3) defendant "displayed a complete disregard for moral and ethical rules," and (4) defendant's alleged failure to control his alcohol consumption was not a mitigating factor.

The scope of the second appeal is limited by the scope of the remand. *People v Jones*, 394 Mich 434, 435-436; 231 NW2d 649 (1975); *People v Kincade (On Remand)*, 206 Mich App 477, 481; 522 NW2d 880 (1994). This Court did not require a full resentencing, and the trial court did not conduct a resentencing. Accordingly, two of defendant's arguments, that the trial court erred in failing to accord him the right of allocution on remand and in failing to obtain an updated presentence report, are without merit, as such issues apply only where a full sentencing or resentencing occurs. See MCR 6.425(D)(2)(b) and (c).

The reasons articulated by the trial court in support of its decision to depart from the sentence guidelines have record support and are not clearly erroneous. Moreover, defendant's sentence for second-degree murder does not represent an abuse of the trial court's discretion. The offense involved circumstances not accounted for at all, or inadequately accounted for, in formulating the guidelines. See *People v Houston*, 448 Mich 312, 321; 532 NW2d 508 (1995). The sentence is proportionate to the seriousness of the circumstances surrounding the offense and the offender. See *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

However, there is no indication in the record that the trial court explained its reasons for departure on the sentencing information report, as required by MCR 6.425(D)(1). See *People v Edgett*, 220 Mich App 686, 688-689; 560 NW2d 360 (1996). Accordingly, we remand to the trial court for the limited purpose of allowing the trial court to explain its reasons for departure on the sentencing information report in compliance with MCR 6.425(D)(1). Defendant's sentences are affirmed in all other respects.

Defendant's sentences are affirmed but the matter is remanded for compliance with MCR 6.425(D)(1) in accordance with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Helene N. White

/s/ Robert P. Young, Jr.