STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL LYNN HAWKINS, JR,

Defendant-Appellant.

UNPUBLISHED
July 7, 1998

No. 196736
Recorder's Court
LC No. 94-012085

Before: Wahls, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction and sentence of thirty-five to sixty years' imprisonment for second-degree murder, MCL 750.317; MSA 28.549, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court erred in admitting a statement he made to police in which he admitted to the killing. We disagree.

Failure to take a juvenile defendant immediately before the probate court, as required by MCL 764.27; MSA 28.886 does not per se require suppression of a statement made by the defendant. *People v Good*, 186 Mich App 180, 188; 463 NW2d 213 (1990). The proper test to determine whether a juvenile's confession is admissible is whether, under the totality of the circumstances, the statement was made voluntarily. *Id.* Appropriate considerations include (1) whether *Miranda*[1] requirements have been met, (2) the degree of police compliance with the statute, (3) the presence of an adult parent or guardian, and (4) the juvenile defendant's personal background. *Good, supra*. In addition, the court must consider the accused's age, education, and intelligence, the length of detention, the nature of the questioning, and whether the accused was injured, intoxicated, in ill health, or threatened. *Id.*, p 189.

The record shows that defendant was advised of his rights, and knowingly waived them. Although police notified defendant's mother, they conducted questioning prior to her arrival at police headquarters. There is nothing in defendant's background that would make the statement involuntary.

He was sixteen years old, in tenth grade, and relatively intelligent. He was larger than his interrogator and unlikely to be physically intimidated. The length of detention was relatively short. There was no repeated questioning, and defendant was not injured, intoxicated, in ill health or physically abused. Under the totality of the circumstances, the trial court did not err in finding that defendant's statement was voluntary. *Id.*

Defendant next argues that his thirty-five- to sixty-year sentence is disproportionate, and that the trial court failed to articulate sufficient reasons for departing from the sentencing guidelines range of twelve to twenty-five years. We disagree.

"[T]he 'key test' of proportionality is not whether the sentence departs from or adheres to the recommended range, but whether it reflects the seriousness of the matter." *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Further, a trial court must place its reasons for departing from the guidelines on the record at the time of sentencing. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). Here, the trial court noted that defendant committed a brutal, senseless murder. The trial court stated that the guidelines did not adequately take into account the dangerous nature of the offense and the dangerous potential of defendant. This statement is sufficient to support the departure from the sentencing guidelines and satisfies the articulation requirement. *People v Watkins*, 209 Mich App 1, 6; 530 NW2d 111 (1995). Additionally, we find no abuse of discretion on behalf of the trial court in sentencing defendant and find that the sentence imposed is proportionate to the seriousness of the crime and the background of the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Myron H. Wahls
/s/ Kathleen Jansen
/s/ Hilda R. Gage

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).