

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH EDWARD GRONEWALD,

Defendant-Appellant.

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UNPUBLISHED

March 26, 1999

No. 205907

Tuscola Circuit Court

LC No. 96-007013 FC

Before: Markman, P.J., and Hoekstra and Zahra, JJ.

PER CURIAM.

Defendant appeals by right his convictions for carjacking, MCL 750.529A; MSA 28.797(a), armed robbery, MCL 750.529; MSA 28.137, and carrying a concealed weapon (CCW), MCL 750.227; MSA 28.424. The convictions resulted from an incident in which defendant and an accomplice forced another man to drive them to a remote location, where they beat the man and stole two gold rings from him. Defendant and his accomplice then left the man at the site of the beating, stole his van, and later dumped it into a body of water. Defendant was sentenced to a term of ten to twenty years' imprisonment for the armed robbery conviction, a consecutive term of ten to twenty years for the carjacking conviction, and a concurrent term of three to five years for the CCW conviction. We affirm.

Defendant first argues that the trial court improperly departed from the sentencing guidelines. Defendant's guidelines were three to eight years for the armed robbery and there were no guidelines for the carjacking. Departures from the sentencing guidelines are subject to careful scrutiny by this Court, *People v Milbourn*, 435 Mich 630, 656-57; 461 NW2d 1 (1990), in order to determine whether the trial court abused its discretion. *People v Coles*, 417 Mich 523, 550; 339 NW2d 440 (1983), overruled in part on other grounds *Milbourn, supra*.

In determining whether a trial court has abused its discretion in sentencing, this Court must consider whether the sentence imposed is proportionate to the seriousness of the conduct and the prior record of the offender. *Milbourn, supra* at 630. To aid in appellate review, if a trial court departs from the sentencing guidelines range, it must articulate its reasons for doing so both on the record at sentencing and on the sentencing information report. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). Nonetheless, when the reasons for departure stated on the sentencing information

report are adequate, then the absence of those reasons on the record may be harmless error and remand for articulation may not be necessary. *Fleming, supra* at 419. Here, the lower court stated no reason on the record for its departure, although it did state on the sentencing information report departure evaluation that “this man is dangerous and his future is highly ‘suspect.’” Although this assertion is admittedly vague and does not facilitate appellate review of the reasons for the departure very well, the record provides information from which this Court can clearly deduce the trial court’s reasons for departure. Specifically, although defendant’s five prior misdemeanor convictions were accounted for in the sentencing guidelines, charges against him for a second-degree home invasion and a larceny from a building were dropped pursuant to a plea bargain and were not accounted for in the sentencing guidelines. The nature of a plea bargain and the charges that were dismissed in return for the plea bargain may be considered by a sentencing court in departing from the sentencing guidelines. *People v Brzezinski (After Rem)*, 196 Mich App 253, 256; 492 NW2d 781 (1992). Moreover, defendant’s pending charge for another home invasion was also not reflected in the sentencing guidelines. A sentencing court may consider pending charges in sentencing outside of the guidelines. *People v Coulter (After Rem)*, 205 Mich App 453, 456; 517 NW2d 827 (1994). These crimes that were unaccounted for by the guidelines, along with the severity of the victim’s injuries and defendant’s history of drug and alcohol abuse, likely provided the basis for the trial court’s conclusion that defendant was “dangerous” and would likely create additional trouble in the future. Under such circumstances, the failure to adequately articulate reasons for departure is harmless error and does not require a remand for articulation. *People v Kreger*, 214 Mich App 549, 554-55; 543 NW2d 55 (1995).

Defendant further argues that the trial court’s reasons for departure were not proper because they did not consider defendant’s rehabilitative potential. We have no indication to what extent the court considered such potential except that it concluded that defendant’s future was “highly suspect.” However, even if the trial court did not explicitly consider defendant’s rehabilitative potential, such potential is only one factor that a court *may* consider in determining sentences. *People v Johnson*, 173 Mich App 706, 709; 434 NW2d 218 (1988). The trial court was not required to consider this factor. *Coles, supra* at 550. Therefore, even if the trial court’s statement is interpreted in the manner ascribed to it by defendant, it was not an improper basis from which to depart from the sentencing guidelines.

Defendant next argues that the two year upward departure from the guidelines range of three to eight years for his armed robbery conviction, along with the fact that the armed robbery sentence is to be served consecutively to his carjacking sentence, renders his sentence disproportionate. The consecutive nature of sentences has no effect on the application of the proportionality principle to the individual sentences. *Milbourn, supra* at 736. Moreover, based on the reasons previously set forth, the two year upward departure from the maximum minimum sentence under the guidelines was not disproportionate, in our judgment, because the departure better reflected the true extent of defendant’s criminal history.

Defendant’s final contention is that he should be resentenced before a different judge. Because we conclude that defendant’s sentence was proportionate, defendant is not entitled to

resentencing. *People v Phillips (After Second Remand)*, 227 Mich App 28, 37; 575 NW2d 784 (1997). Therefore, we need not address whether resentencing by a different judge is necessary.

Affirmed.

/s/ Stephen J. Markman

/s/ Joel P. Hoekstra

/s/ Brian K. Zahra