

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS EUGENE RUCKER, III,

Defendant-Appellant.

UNPUBLISHED

April 28, 2000

No. 208671

Washtenaw Circuit Court

LC No. 97-008402-FC

Before: Holbrook, Jr., P.J., and Smolenski and Collins, JJ.

HOLBROOK, JR., P.J. (dissenting)

To be proportionate, a sentence must be tailored to reflect the circumstances of the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). Sentencing guidelines are used “to insure that sentencing decisions are based on a consistent set of legally relevant factors and that such factors are assigned equal importance for all offenders.” *People v Whitney*, 205 Mich App 435, 436; 517 NW2d 814 (1994). Sentences that depart from the sentencing guidelines are subject to careful scrutiny by a reviewing court. *Milbourn, supra* at 656-657.

In imposing this Draconian departure from the guidelines recommended range of 96 to 180 months’ imprisonment, the trial court was primarily driven by its view of defendant’s rehabilitative potential. Given what it considered to be defendant’s low potential for rehabilitation, and having concluded that defendant’s sentence would not cause others like him to be deterred from engaging in similar behavior, the trial court concluded that the only goal of punishment that it could actualize in this case was the goal of protecting society. “It leaves me with the final reason for incarceration,” the court opined, “and probably the only one that’s valid anymore and that is incapacitation.”

In support of its conclusion that defendant had virtually no chance to be successfully rehabilitated, the court made the following observations: “I also do not think that our prison system rehabilitates, perhaps is not capable of rehabilitating—you or people who commit these acts. . . . If I thought there was any reasonable likelihood that you would be rehabilitated in a short period of time, I would fashion a sentence to reflect that.” I take these comments to mean that the trial court based its conclusion respecting rehabilitation on a psychological judgment about the rehabilitative potential of pedophiles in general. Absent any evidence in the record as to the soundness of such a conclusion, I

believe this medical judgment is conspicuously outside the professional expertise of the court. It also does not reflect the rehabilitative potential of this particular offender. The sentences of individuals who commit this same crime should not be subject to the uncertain, and potentially wide ranging psychological speculations of the courts, unsupported by the record, on how defendants will respond to psychiatric treatment.

The court's comments also reflect a belief about the ability of the Michigan prison system to rehabilitate criminals like defendant. In essence, the court indicated that our prison system is incapable of meeting the goal of rehabilitating such criminals. If this observation is based on the court's beliefs about pedophiles in general, I have already noted that I do not believe this reasoning supports the sentence imposed. If this observation serves as a disparaging commentary on the efficacy of our prison system's rehabilitative efforts, then I fail to see why this defendant should shoulder those failures through the imposition of a life sentence. Further, if this observation accurately characterizes the prison system's ability to rehabilitate individuals such as defendant, then it would seem logical that all defendant's convicted of this crime should be given a mandatory life sentence. This is a political judgment that I believe is best left in the hands of the legislative branch of government.

Certainly the crimes committed by defendant are heinous, and he deserves a significant and severe prison sentence. I am not convinced however, that the life sentence imposed by the trial court reflects the circumstances of this offense and this offender. *Milbourn, supra* at 635-636; *People v Rockey*, 237 Mich App 74, 80-81; 601 NW2d 887 (1999). Accordingly, I would reverse defendant's sentence and remand for resentencing. In a related matter, given the certainty with which the trial court expressed its feelings on this matter, and in order to preserve the appearance of justice, I would assign the case to a different judge on remand. *People v Evans*, 156 Mich App 68, 72; 401 NW2d 312 (1986).

/s/ Donald E. Holbrook, Jr.