

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

IAN ELMER ANDERSON,

Defendant-Appellant.

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UNPUBLISHED

October 2, 2001

No. 231872

Lenawee Circuit Court

LC No. 00-008849-FC

Before: Cavanagh, P.J. and Markey and Cooper, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his sentence of forty-five to ninety years in prison imposed on his plea-based conviction of armed robbery, MCL 750.529. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty of armed robbery in exchange for dismissal of other charges. The legislative sentencing guidelines recommended a minimum term range of nine to fifteen years. At sentencing, the trial court found that substantial and compelling reasons existed to depart from the guidelines. The trial court sentenced defendant to 45 to 90 years in prison, with credit for 187 days. That sentence was to run concurrent to the sentence for a separate offense, which defendant does not challenge on appeal.

The legislative sentencing guidelines apply to offenses committed on or after January 1, 1999. MCL 769.34(1). In most instances, a trial court is required to impose a minimum sentence within the calculated guidelines range. MCL 769.34(2)(a) and (b). A trial court may depart from the guidelines if substantial and compelling reasons exist to do so. MCL 769.34(3). To constitute a substantial and compelling reason for departing from the guidelines, the reason must be objective and verifiable, and must irresistibly hold the attention of the court. *People v Babcock*, 244 Mich App 64, 75; 624 NW2d 479 (2000). The trial court's determination that a substantial and compelling reason exists for departure is reviewed for clear error. *Id.* at 75-76. However, whether such a factor is objective and verifiable is reviewed as a matter of law. *Id.* at 76. The trial court's ultimate conclusion, that an objective and verifiable factor constituted a substantial and compelling reason to warranting departure from the guidelines, is reviewed for an abuse of discretion. *Id.*

Once we determine that a trial court's stated reason for departing from the guidelines is objective and verifiable, we must limit our review of a sentence to whether the trial court abused its discretion in concluding that the factor constituted a substantial and compelling reason for the departure. *Id.* at 78. If we conclude that a substantial and compelling reason existed for departure from the guidelines, we must affirm the resulting sentence as long as it otherwise comports with the sentencing guidelines and other requirements of the law. *Id.* The statutory sentencing guidelines do not authorize a further review of the sentence pursuant to the principle of proportionality set out in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). *Babcock*, *supra* at 77-78.

In the instant case, the trial court read defendant's lengthy psychological report into the record and concluded that there were substantial and compelling reasons for departing from the guidelines. We find that the factors considered by the trial court were objective and verifiable and that there was no clear error in the determination that they were substantial and compelling. Furthermore, the trial court did not abuse its discretion when it imposed a minimum term that exceeded the statutory guidelines.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jessica R. Cooper