

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBBY LEE HANSEN,

Defendant-Appellant.

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UNPUBLISHED  
November 18, 2003

No. 241729  
Montcalm Circuit Court  
LC No. 99-000110-FC

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

PER CURIAM.

Defendant appeals as of right his sentence of fifty-four months to fifteen years in prison imposed on remand for his conviction of criminal sexual conduct in the second degree (CSC II), MCL 750.520c. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Complainant, defendant's stepdaughter, alleged that defendant penetrated her vagina with his penis and forced her to touch his penis with her hand. A jury convicted defendant of CSC II, but acquitted him of criminal sexual conduct in the first degree (CSC I), MCL 750.520b. The trial court sentenced defendant to four and one-half to fifteen years in prison.

In *People v Hansen*, unpublished opinion per curiam of the Court of Appeals, issued November 27, 2001 (Docket No. 224328), another panel of this Court vacated defendant's sentence and remanded the matter for resentencing. In its decision, the *Hansen* Court held that the trial court erred in scoring Offense Variable (OV) 9, MCL 777.39, at ten points for multiple victims<sup>1</sup> on the ground that complainant was the only victim in the transaction that gave rise to the conviction for which sentence was imposed. *Id.*, slip op at 3.

On remand, the statutory sentencing guidelines recommended a minimum term range of nineteen to thirty-eight months. In imposing sentence, the trial court found that substantial and compelling reasons existed to depart upward from the guidelines. The trial court characterized

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<sup>1</sup> Defendant's other stepdaughters also alleged that he sexually molested them. The trial court had held this evidence was inadmissible at trial. MRE 404(b).

defendant as a sexual predator based on the evidence that he sexually molested several young girls over a period of time, and concluded that it was likely that defendant would repeat his behavior if afforded the opportunity to do so. The trial court found that in perpetrating the abuse, defendant violated his position of trust as complainant's stepfather, and observed that complainant and the other girls were especially vulnerable because their mother did not take steps to ensure the abuse ended once she became aware of it. The trial court sentenced defendant to fifty-four months to fifteen years in prison, with credit for 915 days served.

In most instances a trial court must impose a sentence within the calculated guidelines' range. MCL 769.34(2). A trial court may depart from the guidelines if it finds that a substantial and compelling reason exists to do so. 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. See *People v Babcock*, 469 Mich 247, 272; 666 NW2d 231 (2003). We review the trial court's determination of the existence of a substantial and compelling reason for departure for clear error, the determination that the reason is objective and verifiable as a matter of law, and the determination that the reason constituted a substantial and compelling reason to depart from the guidelines for an abuse of discretion. *Id.* at 273-274. The extent of a departure from the guidelines is reviewable pursuant to the principle of proportionality set out in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). *Babcock*, *supra* at 261-264. The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). The trial court may depart from the guidelines for nondiscriminatory reasons where legitimate factors either were not considered by the guidelines, or were considered but were given inadequate or disproportionate weight. MCL 769.34(3)(b); *People v Armstrong*, 247 Mich App 423, 425; 636 NW2d 785 (2001).

Defendant argues that the trial court abused its discretion by departing from the guidelines for the offense of CSC II and imposing a minimum term that exceeded the high end of the guidelines. We disagree and affirm defendant's sentence. Defendant correctly notes that he was not formally diagnosed as a sexual predator; however, complainant's siblings alleged that he sexually abused them as well. The guidelines did not take this uncharged conduct into account. Nevertheless, the trial court was entitled to consider it when determining whether a sentence within the guidelines was appropriate. *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994). The guidelines account for victim vulnerability in OV 10 (MCL 777.40, exploitation of vulnerable victim), and for a pattern of conduct in OV 13 (MCL 777.43, continuing pattern of criminal behavior).<sup>2</sup> Here, defendant used his position of trust as complainant's stepfather to exploit her, and he did not stop perpetrating the abuse even after promising complainant's mother he would do so. The abuse escalated in seriousness from sexual contact to penetration. The trial court was allowed to consider the facts underlying defendant's acquittal of the charge of CSC I. *Coulter*, *supra*. The trial court did not err in finding that the depth of defendant's exploitation of complainant and the seriousness of the abuse were given

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<sup>2</sup> In *Hansen*, *supra*, slip op at 4, this Court found that the trial court correctly scored OV 13 at twenty-five points on the ground that the conviction offense was part of a pattern of criminal behavior involving three or more crimes against complainant. MCL 777.43(1)(b).

inadequate weight by the guidelines. *Armstrong, supra*. The trial court did not abuse its discretion by finding that substantial and compelling reasons existed for departing upward from the guidelines, *Babcock, supra*, and it adequately articulated its reasons for exceeding the guidelines. Defendant's sentence adequately reflects the seriousness of the matter, and thus is proportionate. *Houston, supra; Babcock, supra*.

Affirmed.

/s/ Jessica R. Cooper

/s/ Jane E. Markey

/s/ Patrick M. Meter