

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT EDWARD CRAIG,

Defendant-Appellant.

UNPUBLISHED

November 21, 2006

No. 264237

Wayne Circuit Court

LC No. 03-006735-01

Before: White, P.J., and Zahra, and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from his sentences of 17½ to 35 years in prison imposed on his convictions of criminal sexual conduct in the first degree (CSC I), the victim being under 13 years of age, MCL 750.520b(1)(a). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted by a jury of six counts of CSC I and three counts of criminal sexual conduct in the second degree (CSC II), the victim being under 13 years of age, MCL 750.520c(1)(a). The victims were defendant's girlfriend's daughter and his natural daughter. The sentencing guidelines recommended a minimum term range of 126 to 210 months for the convictions of CSC I. The trial court sentenced defendant to concurrent terms of life in prison for each conviction of CSC I, and to 10 to 15 years in prison for each conviction of CSC II.

Defendant appealed, and in *People v Craig*, unpublished opinion per curiam of the Court of Appeals, issued February 10, 2005 (Docket No. 252726), another panel of this Court affirmed defendant's convictions and the sentences imposed on his convictions of CSC II, but remanded for resentencing on his convictions of CSC I. The *Craig* Court found that the trial court relied on both appropriate and inappropriate factors when departing from the guidelines, and concluded that it could not determine whether the trial court would have departed to the same extent had it considered only appropriate factors. *Id.*, slip op at 3-6.

On remand, the trial court determined that the guidelines recommended a minimum term range of 126 to 210 months for CSC I.¹ Defendant argued that his age, 65 at the time, and the

¹ During the hearing, defendant seemed to assert that the guidelines, properly scored,
(continued...)

fact that he had serious health problems constituted substantial and compelling reasons for the trial court to depart below the guidelines when resentencing him on his convictions of CSC I. The trial court disagreed, and sentenced defendant to concurrent terms of 17½ (210 months) to 35 years for CSC I, with credit for 780 days served.

A trial court must impose a sentence within the sentencing guidelines, unless a substantial and compelling reason exists to exceed the guidelines. MCL 769.34(2). To constitute a substantial and compelling reason for departing from the guidelines, a reason must be objective and verifiable, must irresistibly attract the attention of the court, and must be of considerable worth in deciding the length of the sentence. To be objective and verifiable, the factors must be actions or occurrences external to the mind, and must be capable of being confirmed. *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). The reason for the departure must be articulated by the trial court on the record. MCL 769.34(3). A departure from the guidelines cannot be affirmed on the basis of a reason which the appellate court perceives but the trial court did not articulate. A substantial and compelling reason articulated by a trial court to merit a departure from the sentencing guidelines must justify the particular departure at issue. *People v Babcock*, 469 Mich 247, 257-261; 666 NW2d 231 (2003).

We affirm defendant's concurrent sentences of 17½ to 35 years in prison for his convictions of CSC I. Under the sentencing guidelines act, if a minimum sentence is within the appropriate sentencing guidelines range, we must affirm the sentence and may not remand for resentencing absent an error in the scoring of the guidelines or inaccurate information relied on by the trial court in determining the sentence. MCL 769.34(10); *People v Francisco*, 474 Mich 82, 88; 711 NW2d 44 (2006). Defendant's minimum sentences for CSC I are within the guidelines, albeit at the high end. Defendant does not challenge the scoring of the guidelines on appeal, and does not contend that the trial court relied on inaccurate information in imposing sentence. Under the circumstances, we must affirm defendant's sentences.

Even if defendant's sentences were subject to review, he would not be entitled to relief. Defendant's age and the state of his health are objective and verifiable factors. *Abramski, supra*. However, defendant has not shown that these factors should have "irresistibly" attracted the attention of the trial court, or that they in any way mitigated the severity of his actions. We cannot conclude that the sentences imposed for defendant's convictions of CSC I were not within the range of principled outcomes. *Babcock, supra* at 265-269.

Affirmed.

/s/ Helene N. White
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly

(...continued)

recommended a minimum term range of 108 to 180 months for CSC I. Apparently, the probation department concluded that the guidelines recommended a minimum term range of 108 to 180 months. However, on appeal, neither party argues that the trial court erred by relying on a guidelines range of 126 to 210 months.