

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY JAMES COPPERNOLL,

Defendant-Appellant.

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UNPUBLISHED

December 14, 2006

No. 260064

Jackson Circuit Court

LC No. 04-001046-FH

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

A jury convicted defendant of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(b)(i) (victim between 13 and 16 years of age and perpetrator is a member of the same household). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to life in prison. We affirm.

Defendant argues that the trial court abused its discretion when it departed from the sentencing guidelines range. The applicable guidelines range was 36 to 142 months which, under MCL 777.21(3), would have to be increased by 100 percent to reflect defendant's habitual fourth offender status. The adjusted minimum range was, therefore, 72 to 282 months, or 6 to 23½ years. Instead, as noted, the trial court sentenced defendant, who was 56 years old at the time of sentencing, to life in prison.

MCL 734.34(3) provides in part as follows:

A court may depart from the appropriate sentence range established under the sentencing guidelines set forth in chapter XVII if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure. . . .

In *People v Babcock*, 469 Mich 247; 666 NW2d 231 (2003), our Supreme Court stated that a substantial and compelling reason for departing from the sentencing guidelines must be “objective and verifiable” and must “keenly or irresistibly grab our attention.” *Id.* at 272.<sup>1</sup>

Defendant maintains that the trial court erroneously assumed his guilt when it factored into his sentence a dismissed charge involving another young boy. This allegation was chronicled in the presentence investigation report along with defendant’s denial. “A defendant is entitled to be sentenced by a trial court on the basis of accurate information.” *People v Francisco*, 474 Mich 82, 88, 89 n 6; 711 NW2d 74 (2006). When the accuracy of an assertion is disputed and it cannot otherwise be verified, a defendant may be entitled to proof by a preponderance of the evidence at an evidentiary hearing before the statement can be considered for departure. See *People v Callon*, 256 Mich App 312, 333-334; 662 NW2d 501 (2003). Here, however, the court viewed this fact not as an independent basis for the departure, but in concert with defendant’s juvenile attempted rape adjudication, his first-degree criminal sexual conduct conviction (CSC I), and his current CSC II conviction. The court made the point that while prior convictions were scored by the guidelines, the guidelines did not reflect that the prior offenses involved repeated instances of sexual misconduct. Given the context of the remark and these undisputed convictions, we conclude that the trial court would have been similarly struck by the repeated nature of defendant’s crimes regardless of whether it considered the other child’s allegation. *Babcock*, *supra* at 260.

Defendant further asserts that the trial court erred when it classified him as a sexual predator and when it found that this was a substantial and compelling reason to depart.<sup>2</sup> Defendant chose a victim who was 13 years old and preying on such vulnerability is reflective of a predator. Moreover, defendant was previously convicted of CSC I involving an adult woman. That earlier conviction suggests force or coercion consistent with a predatory nature. See MCL 750.520b. Finally, defendant indicated he had a problem that he did not know how to handle and that he should probably be imprisoned. This suggests that defendant recognized his own predatory tendencies. Thus, we find no clear error in this classification. Further, we find no abuse of discretion in treating this as a substantial and compelling reason to depart.

Defendant also claims that because his three sexual misconduct convictions were not significantly similar and took place over a span of 42 years, they are not a substantial and compelling reason to support an upward departure. However, the dissimilarity in the victims

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<sup>1</sup> This Court reviews for an abuse of discretion a trial court’s determination that objective and verifiable factors are substantial and compelling reasons for departure from the sentencing guidelines. *Id.* at 264-265. An abuse of discretion occurs when the sentence is outside of the principled range of outcomes. *Id.* at 269. This Court reviews de novo whether a factor is objective and verifiable. *Id.* at 264. Whether a particular factor exists is a factual determination reviewed for clear error. *Id.*

<sup>2</sup> It is clear from the sentencing information report that when the court used the term “sexual predator” it was not relying on the statutory definition of “predatory conduct” set forth in MCL 777.40(3)(a).

actually shows that defendant is a threat to more than one class of people. These convictions also indicate a recidivist pattern that was only broken by defendant's periods of incarceration. Thus, the trial court did not abuse its discretion when it considered this history.

Finally, defendant contends that the trial court's finding that he was not rehabilitated was countered by the fact that the crime for which he was convicted here occurred a number of years after he was released from prison on his CSC I conviction. We disagree. Defendant's history clearly shows that he has not been rehabilitated and that he repeatedly offends within a relatively short time of being released from prison. Moreover, even defendant expressed concerns about his rehabilitative potential when he stated that he "was sick," "needed some help," and probably needed to go to prison. Accordingly, we conclude that the trial court did not abuse its discretion when it found that this was a substantial and compelling reason to depart.

Defendant also challenges the proportionality of the departure. *Babcock, supra* at 262 (observing that there must be proportionality between the sentence and the "seriousness of the defendant's conduct and to the defendant in light of his criminal record"). One of the factors the trial court cited when it imposed the life sentence was that defendant has failed to rehabilitate himself and will likely continue to be a danger if ever released from prison. The record establishes that, at age 56, defendant has been committing crimes his entire life and has committed three sexual misconduct offenses. He admits that he has an abuse problem that he cannot control. Under these circumstances, it is likely that defendant will be a sexual threat to society if ever released from prison. In other words, given defendant's unrelenting criminal behavior, the sentence of life in prison was not outside the realm of principled outcomes, and was, therefore, not an abuse of discretion.

Affirmed.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Kurtis T. Wilder