

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CONNEZE REDMOND,

Defendant-Appellant.

UNPUBLISHED

November 13, 2008

No. 280331

Wayne Circuit Court

LC No. 05-003284-01

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Defendant was charged with first-degree murder, MCL 750.316, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Following a jury trial, he was acquitted of the murder charge and convicted of the two weapons offenses. He was sentenced as a third habitual offender, MCL 769.11, to five to ten years' imprisonment for the felon-in-possession conviction, and a consecutive two-year term of imprisonment for the felony-firearm conviction. In a prior appeal, this Court affirmed defendant's convictions but remanded for resentencing, finding that the trial court may have relied on inappropriate factors in choosing to depart from the guidelines. *People v Redmond*, unpublished opinion per curiam of the Court of Appeals, issued December 21, 2006 (Docket No. 264330). On remand, the trial court imposed the same sentences and defendant once again appeals. We affirm defendant's sentences, but remand for correction of the presentence report. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

A court must impose a minimum sentence within the guidelines range unless a departure from the guidelines is permitted. MCL 769.34(2). The court may depart from the guidelines if it "has a substantial and compelling reason for that departure and states on the record the reasons for departure." MCL 769.34(3). The court may depart from the guidelines where there are legitimate factors not considered by the guidelines or where factors considered by the guidelines have been given inadequate or disproportionate weight. MCL 769.34(3)(a) and (b); *People v Armstrong*, 247 Mich App 423, 425; 636 NW2d 785 (2001).

"[T]he Legislature intended 'substantial and compelling reasons' to exist only in exceptional cases." *People v Fields*, 448 Mich 58, 68; 528 NW2d 176 (1995). Only objective factors that are capable of verification may be used to assess whether there are substantial and compelling reasons to deviate from the minimum sentence range under the guidelines. *People v Babcock*, 469 Mich 247, 257; 666 NW2d 231 (2003). Objective and verifiable factors are

“actions or occurrences that are external to the minds of the judge, defendant, and others involved in making the decision, and must be capable of being confirmed.” *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). A departure is appropriate “if there are substantial and compelling reasons that lead the trial court to believe that a sentence within the guidelines range is not proportionate to the seriousness of the defendant’s conduct and to the seriousness of his criminal history,” such that a departure would result in “a more proportionate criminal sentence than is available within the guidelines range.” *Babcock, supra* at 264.

On appeal, this Court reviews the reasons for a departure for clear error. The trial court’s determination that a particular factor is objective and verifiable is reviewed as a matter of law. Whether the reasons cited by the trial court are substantial and compelling enough to justify the departure is reviewed for an abuse of discretion, which occurs when the minimum sentence imposed falls outside the range of principled outcomes. *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008).

The trial court properly found that there were objective and verifiable factors that supported a departure from the guidelines. Defendant had a prior weapons offense and was sentenced to probation. He violated probation by selling drugs. He was given another chance at probation, but violated probation by failing to report. He was sentenced to jail and committed the instant offenses within days of his release. Defendant was once again in unlawful possession of a gun and fired it into an occupied car. The facts that defendant had twice been sentenced to probation, that he had done poorly while on probation, that he committed the instant offenses shortly after serving his sentence for violating his probation, and that he fired the gun into an occupied vehicle were objective and verifiable factors not accounted for by the guidelines.

The cover page of the presentence report indicates that defendant was on probation at the time he committed the instant offenses. The trial court and the parties agreed that this statement was incorrect, but the inaccurate information was not corrected. If a court finds that challenged information in a presentence report is inaccurate, the report should be amended and the inaccurate information stricken. MCL 771.14(6); *People v Spanke*, 254 Mich App 642, 649; 658 NW2d 504 (2003). Accordingly, we remand for the limited purpose of correcting the erroneous reference to defendant’s probationary status in the presentence report.

We affirm defendant’s sentences but remand for correction of the presentence report. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis