

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

---

PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
August 14, 2014

v

PHILLIP REID STOWE,  
  
Defendant-Appellant.

No. 315215  
Macomb Circuit Court  
LC No. 2012-003763-FH

---

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals the trial court's sentence on four counts of second-degree criminal sexual conduct (CSC) with a child under the age of 13, MCL 750.520(C)(1)(a). For the reasons stated below, we affirm.

**I. FACTS AND PROCEDURAL HISTORY**

Defendant is a grandfather who sexually molested a number of children in his family. He digitally penetrated his 13-year-old granddaughter several times over three years, rubbed his 10-year-old great niece's breasts on three occasions, and attempted to molest his 8-year-old granddaughter. In November 2012, the Macomb County prosecutor's office charged him with four counts of violation of MCL 750.520(C)(1)(a), to which he pled no contest.<sup>1</sup> The trial court sentenced him to 10 to 15 years on each count, which was an upward departure from the sentencing guideline's recommendation of a sentence range from 43 to 86 months. It explained that the upward departure was warranted because of the severity of defendant's crimes, particularly his exploitation of his familial relationships with the young victims.

Defendant appealed the sentence to our Court, and argues that because the trial court did not explain how the upward departure was proportionate to defendant's conduct and criminal history, his sentence is disproportionate to his crimes and should be vacated.

---

<sup>1</sup> Defendant was also convicted in Oakland County for two counts of CSC II involving a child under the age of 13, and sentenced to 15 to 100 years in prison.

## II. STANDARD OF REVIEW

The existence or nonexistence of a particular factor for upward departure “is a factual determination for the sentencing court to determine,” and is reviewed for clear error. *People v Babcock*, 469 Mich 247, 264–65; 666 NW2d 231 (2003). The determination that a particular factor is “objective and verifiable” is reviewed as a matter of law, and “[a] trial court’s determination that the objective and verifiable factors present in a particular case constitute substantial and compelling reasons to depart from the statutory minimum sentence shall be reviewed for abuse of discretion.” *Id.* The amount of a departure is also reviewed for an abuse of discretion. *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008).

## III. ANALYSIS

When it sentences a defendant, a trial court “may depart from the appropriate sentence range established under the sentencing guidelines . . . if the court has a substantial and compelling reason for that departure and states on the record the reasons for that departure.” MCL 769.34(3). Substantial and compelling reasons must derive from objective and verifiable facts, “irresistibly grab” the Court’s attention, and be “of considerable worth in deciding the length of a sentence.” *Babcock*, 469 Mich at 257 (citations omitted). Objective and verifiable facts are actions or occurrences that are external to the mind and capable of being confirmed. *People v Horn*, 279 Mich App 31, 43; 755 NW2d 212 (2008). Departure cannot be based on an offense or offender characteristic that has already been taken into account during the determination of the sentencing guidelines range unless the facts indicate that the characteristic has been given “inadequate or disproportionate weight.” MCL 769.34(3)(b). “For a departure to be justified, the minimum sentence imposed must be proportionate to the defendant’s conduct and prior criminal history.” *Smith*, 482 Mich at 300. “When departing [from the guidelines], the trial court must explain why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been.” *Id.* at 304.

Here, the trial court had a “substantial and compelling reason” to depart from the sentencing guidelines, and stated “the reasons for that departure” on the record. MCL 769.34(3). It assessed defendant with the maximum amount of points under OV 10, for his “predatory conduct.” MCL 777.40(1)(a). Because defendant’s actions were “predatory” under OV 10—as opposed to mere “abuse” of the “[offender’s] authority status”<sup>2</sup>—the trial court correctly recognized that the sentencing guidelines did not account for the fact that defendant *also* abused his position of authority and familial relationship to his young victims. MCL 769.34(3)(b). The trial court then considered the “objective and verifiable” fact of a familial relationship between defendant and his victims, and imposed an upward departure on his sentence to account for defendant’s violation of this familial relationship. *Babcock*, 469 Mich at 257. The trial court stated its reasoning for the above on the record in compliance with Michigan case law.

Defendant does not contest any of the above. Instead, his argument focuses solely on the proportionality of his sentence, namely, that the trial court did not explain how the harsher

---

<sup>2</sup> MCL 777.40(1)(b).

sentence he received was more proportionate to his crimes and prior criminal history<sup>3</sup> than the sentence suggested by the sentencing guidelines.

We find this argument unconvincing because it misinterprets *Smith*. Defendant implies that *Smith* requires trial court to use “proportionality” as a sort of magic word—that if the trial court does not use that word in the record, it has not explained how the departure from the sentencing guidelines is proportional to the defendant’s sentence, and accordingly the sentence must be vacated. We do not read *Smith* to mandate that the trial court go through this procedural hoop: instead, it merely requires that the trial court “explain why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been.” *Smith*, 482 Mich at 304. The trial court did so here. It repeatedly emphasized the heinous nature of defendant’s crimes and stated that the sentencing guidelines did not provide an adequate penalty—i.e., a proportionate penalty—to fit defendant’s conduct. Though it did not explicitly mention defendant’s prior criminal history in its explanation, it is not required to make such an explicit mention in the record.

Accordingly, the trial court properly explained its reasons for its upward departure in defendant’s sentence, and his appeal is without merit.

Affirmed.

/s/ Kathleen Jansen  
/s/ Henry William Saad  
/s/ Pat M. Donofrio

---

<sup>3</sup> According to defendant, he has no prior criminal history, and the prosecution does not contest this assertion in its brief.