

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER LEE RANDOLPH,

Defendant-Appellant.

UNPUBLISHED

April 22, 2021

No. 352282

St. Clair Circuit Court

LC No. 17-001143-FC

Before: GLEICHER, P.J., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

A jury convicted defendant, Christopher Lee Randolph, of two counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(2)(b) (sexual penetration by an individual 17 years of age or older against an individual less than 13 years), and two counts of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(2)(b) (sexual contact by an individual 17 years of age or older against an individual less than 13). The trial court sentenced defendant to a term of 25 years to life in prison for each CSC-I conviction, to be served consecutively to each other but concurrently with sentences of 10 to 15 years in prison for each CSC-II conviction. Defendant appealed, and this Court affirmed his convictions but remanded for resentencing. *People v Randolph*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2019 (Docket No. 340167), p 1.¹ At defendant’s resentencing, the trial court sentenced defendant to a term of 30 to 50 years in prison for each CSC-I conviction, to be served consecutively to each other but

¹ This Court held that the trial court had erred by sentencing defendant to a term of 25 years to life in prison. *Randolph*, unpub op at pp 5-6. Citing MCL 769.9(2), this Court explained that the trial court was required to sentence defendant to a term of years *or* life imprisonment—but not both. *Id.* Also, this Court found that the trial court had failed to provide sufficient justification for requiring the CSC-I sentences to run consecutively. *Id.* at 6. For those reasons, this Court remanded to the trial court and ordered it to articulate “particularized reasons” for imposing consecutive sentences. *Id.* at 7.

concurrently with sentences of 10 to 15 years in prison for each CSC-II conviction. Defendant again appeals. We affirm.

I. BACKGROUND

This case arises from defendant's sexually assaulting his nine-year-old biological daughter. On an evening in March of 2017, defendant picked up the victim from her mother's home to spend the weekend with him. Shortly after the victim went to bed, defendant entered her room. Defendant asked her to come sleep in his bed. Once defendant got the victim in his bedroom, defendant took off his clothes and ordered the victim to take off her clothes. While lying in his bed with the victim, he touched the victim's vagina and put the victim's hand on his penis. He also penetrated the victim with his finger and penis.

At defendant's resentencing hearing, defendant asked the trial court to impose the mandatory minimum—25 years' imprisonment—as his minimum sentence.² If the trial court wished to impose a sentence above the mandatory minimum, defendant argued, the trial court would have to treat it like a departure sentence and justify the sentence accordingly. The trial disagreed, stating:

[This] Court does not consider the request for sentencing above, above the 25-year minimum to be a request for departure. Nor if [this] Court were to impose the sentence requested by the People, would the Court construe that, nor does the law construe [it] as a departure.

The trial court then sentenced defendant to a term of 30 to 50 years in prison for each CSC-I conviction, and stated the following reasons for the sentences imposed: (1) there may have been other victims other than the one victim in this case; (2) defendant had shown zero remorse for his crime; (3) defendant penetrated the victim in two different ways; (4) the victim was defendant's biological daughter; and (5) defendant assaulted the victim at a time when she had no other adults to turn to for protection.

The trial court next considered whether defendant's two sentences for CSC-I should run consecutively or concurrently to each other. Over defendant's objection, the trial court elected to sentence defendant to consecutive sentences, and stated the following reasons: (1) the victim was defendant's biological daughter; (2) defendant penetrated the victim in two different ways; (3) defendant assaulted victim at a time when she had no other adults to turn to for protection; and (4) defendant's crime would leave a "devastating impact" on the victim.

Defendant now appeals the sentences imposed by the trial court on remand.

² The CSC-I statute, MCL 750.520b, states that "[c]riminal sexual conduct in the first degree is a felony punishable as follows: . . . [f]or a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years." MCL 750.520b(2)(b).

II. ANALYSIS

Defendant raises two issues on appeal. First, he argues that his sentence is invalid because the trial court imposed his sentences under the belief that it was not departing from the guidelines and because his sentence is disproportional. Second, he argues that the trial court failed to justify its decision to impose consecutive sentences. For those reasons, he asks us to vacate his sentences and remand for resentencing. We address both issues in turn.

A. VALIDITY AND PROPORTIONALITY

“[T]he standard of review to be applied by appellate courts reviewing a sentence for reasonableness on appeal is abuse of discretion.” *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017). A trial court abuses its discretion when it violates the principle of proportionality or fails to “provide adequate reasons for the extent of the departure sentence imposed.” *Id.* at 476.

The Michigan sentencing guidelines are advisory in nature, but a sentencing court must still consult them when fashioning a sentence. See *People v Lockridge*, 498 Mich 358, 391; 870 NW2d 502 (2015). When a trial court imposes a sentence exceeding the guideline minimum range, this Court reviews the sentence for reasonableness. *Id.* at 392.

To assist this Court in its review for reasonableness, a sentencing court must explain why it chose to depart from the minimum-sentence range set forth in the guidelines. *People v Dixon-Bey*, 321 Mich App 490, 525; 909 NW2d 458 (2017). Because the sentencing guidelines provide an objective measure for proportionality, a trial court should also explain why a departure sentence is more proportionate than a sentence within the guidelines would have been. *Id.* at 525. In so explaining, the trial court should consider: (1) whether the guidelines accurately reflect the seriousness of the crime; (2) whether there are factors that the guidelines do not consider; and (3) whether there are factors given inadequate weight by the guidelines. *Id.*

In this case, because defendant is more than 17 years old and committed CSC-I against a person younger than 13 years of age, defendant was subject to a mandatory-minimum sentence of 25 years in prison. MCL 750.520b(2)(b); *People v Benton*, 294 Mich App 191, 203; 817 NW2d 599 (2011). For each CSC-I conviction, defendant’s minimum-sentence range under the guidelines was 81 to 135 months in prison. Hence, defendant’s mandatory-minimum sentence is almost 14 years above the upper end of the minimum-sentence range under the guidelines. Nonetheless, the mandatory-minimum sentence itself is not considered a departure sentence. When a statute carries a mandatory minimum, the mandatory-minimum term of imprisonment becomes the de facto guidelines minimum. See *People v Payne*, 304 Mich App 667, 672; 850 NW2d 601 (2014), citing MCL 769.34(3) and *People v Wilcox*, 486 Mich 60, 69-70; 781 NW2d

784 (2010).³ In short, the minimum sentence in this case was 25 years in prison—not 81 to 135 months in prison.

Because the mandatory minimum serves as the de facto sentencing guidelines minimum range under the sentencing guidelines, any sentence that exceeds the mandatory minimum is equivalent to a sentence outside the guidelines minimum range. *Payne*, 304 Mich App at 673. Given this, the trial court in this case did impose a departure sentence.

Despite the trial court’s apparent misconception of the law, the trial court still proceeded as if it were imposing a departure sentence. Consistent with *Dixon-Bey*, 321 Mich App at 525, the trial court explained why it believed that a minimum sentence of five years above the mandatory minimum was appropriate in defendant’s case. And at least three out of the five reasons the trial court gave for departure were factors not considered by the guidelines: (1) the victim was defendant’s biological daughter; (2) defendant had shown little to no remorse for his crimes; and (3) defendant penetrated the victim in two different ways. Although the trial court did not *acknowledge* that it was imposing a departure sentence—it acted as though it were.

Even though the trial court sentenced defendant in accordance with the law, defendant argues that the trial court’s misstatement of the law is, by itself, enough to invalidate his sentence. We conclude that defendant’s argument is without merit.

Our Supreme Court has indeed held that “[a] sentence is invalid if it is ‘based upon . . . a misconception of law.’ ” *People v Turner*, 505 Mich 954; 936 NW2d 827 (2020), quoting *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). The key phrase in this proposition is “based on.” For a sentence to be invalid, a sentencing court must not only harbor a misconception of law, it must in fact sentence a defendant in accordance with that misconception. This is illustrated in *People v Hegwood*, 465 Mich 432; 636 NW2d 127 (2001), which defendant cites in support of his argument. In *Hegwood*, a trial court erroneously believed that the Michigan sentencing guidelines were an unconstitutional usurpation of judicial power and that they were therefore legally invalid. *Id.* at 435. Acting in accordance with this misconception of law, the trial court chose to ignore the guidelines when it sentenced defendant and refused to articulate a substantial and compelling reason for departing from the guidelines. *Id.* at 433, 440.⁴ Accordingly, our Supreme Court vacated defendant’s sentence and remanded for resentencing. *Id.* at 440.

³ *Payne* is no longer good law only to the extent that it holds a trial court must have a substantial and compelling reason for exceeding the mandatory minimum. Yet, it remains good law for the proposition that the mandatory-minimum sentence serves as the de facto guideline minimum. *Wilcox* and *Payne* remain relevant on the point that a minimum sentence imposed by a trial court constitutes a departure if it exceeds a mandatory minimum sentence, such as the 25-year mandatory minimum in MCL 750.520b(2)(b), as well as exceeding the minimum-sentence range expressed in the guidelines.

⁴ *Hegwood* was decided before *Lockridge* declared MCL 769.34(3) unconstitutional. See *Lockridge*, 498 Mich at 391-392 (striking down MCL 769.34(3), which required a trial court to articulate a “substantial and compelling reason” for departure from guidelines).

In contrast to *Hegwood*, the trial court in this case did not act in accordance with its misconception of the law, i.e., the trial court's sentences were not "based on" a misconception of law. In *Hegwood*, the trial court's sentence was not invalid simply because the trial court harbored an erroneous belief. Rather, the sentence was invalid because the trial court conformed its conduct to that erroneous belief: the trial court ignored the sentencing guidelines and declined to give substantial or compelling reasons for the departure sentence imposed. Here, however, the trial court harbored an erroneous belief, but did not conform its conduct to it. Although the trial court believed that defendant's 30-year minimum sentences were not departures from the guidelines, it still justified those sentences as if they were. If the trial court had acted according to its erroneous belief like the trial court in *Hegwood* did, it would have either given no explanation for its departure from the minimum-guidelines range or would have restated factors already considered by the guidelines. The trial court here did neither. Simply put, defendant's sentences were not "based on" a misconception of law.

As to defendant's argument that the trial court ignored the minimum-guidelines range, the record shows that this is incorrect. The trial court explicitly acknowledged the guidelines range at defendant's resentencing hearing. In any case, the actual minimum-guidelines range here was irrelevant. As previously discussed, the actual minimum-guidelines range was supplanted by the mandatory-minimum sentence.

Finally, we conclude that the trial court's upward departure of five years from the mandatory-minimum sentence is proportional to the circumstances of defendant's crimes. Indeed, under these same circumstances, this Court has expressly held that life imprisonment is a proportional sentence:

[D]efendant's rape of his own minor child represents one of the most egregious forms of the crime of first-degree criminal sexual conduct because of the helplessness and harm to the victim when so abused by a parent. Furthermore, it represents an act that has been historically viewed by society and this Court as one of the worst types of sexual assault. Therefore, taking only the present offense, a trial court would appear justified in imposing a sentence approaching the maximum allowed under the law. [*People v Sabin (On Remand)*, 242 Mich App 656, 662-663; 620 NW2d 19 (2000)].

Accordingly, the trial court did not abuse its discretion in departing from the mandatory-minimum sentence.

In sum, while defendant is correct that the trial court misconstrued the law, the trial court nonetheless acted in accordance with the law when imposing defendant's sentences. And because defendant's sentences are otherwise proportional, we affirm the length of defendant's sentences.

B. CONSECUTIVE SENTENCES

"When a statute grants a trial court discretion to impose a consecutive sentence, the trial court's decision to do so is reviewed for an abuse of discretion, i.e., whether the trial court's decision was outside the range of reasonable and principled outcomes." *People v Norfleet*, 317 Mich App 649, 654; 897 NW2d 195 (2016), citing *People v Babcock*, 469 Mich 247, 269; 666

NW2d 231 (2003). “Accordingly, trial courts imposing one or more discretionary consecutive sentences are required to articulate on the record the reasons for each consecutive sentence imposed.” *Norfleet*, 317 Mich App at 654.

In Michigan, concurrent sentencing is the norm. See *People v Chambers*, 430 Mich 217, 231; 421 NW2d 903 (1988). For this reason, a trial court may require sentences to run consecutively only if a statute explicitly authorizes it to do so. *People v Ryan*, 295 Mich App 388, 401; 819 NW2d 55 (2012), quoting *People v Brown*, 220 Mich App 680, 682; 560 NW2d 80 (1996). The CSC-I statute, MCL 750.520b, authorizes a trial court to impose consecutive sentences. *Ryan*, 295 Mich App at 402, citing MCL 750.520b(3). The statute states that a trial court “may order a term of imprisonment . . . to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.” MCL 750.520b(3). A CSC-I offense and another criminal offense to which a CSC-I sentence will run consecutively are a part of “the same transaction” if they both occurred during one “continuous time sequence.” *People v Bailey*, 310 Mich App 703, 725; 873 NW2d 855 (2015). A CSC-I sentence may run consecutive to another CSC-I sentence if both those offenses occurred during a continuous time sequence. *Ryan*, 295 Mich App at 406-407. In this case, defendant committed two counts of CSC-I during a single assault on the victim. Consequently, the trial court had discretion to impose consecutive sentences.

Defendant does not argue that the trial court abused its discretion in deciding to impose consecutive sentences. Instead, defendant argues remand is necessary because the trial court failed to give “particularized reasons” for its decision.

When a trial court elects to impose consecutive sentences, it must explain on the record why it chose to do so. *Norfleet*, 317 Mich App at 654. In so explaining, a trial court must cite “particularized reasons”—specific to the offender and his offense—that justify the “strong medicine” of consecutive sentencing. *Id.* at 666. Reasons stated in general, or imprecise terms, are not enough. *Id.* For example, a trial court stating that it has “taken into account defendant’s background, his history, [and] the nature of the offenses involved,” would not be enough to justify imposing consecutive sentences. See *id.* Instead, a trial court must explain what specific aspects of defendant’s background, his history, or the nature of his offenses justify consecutive sentencing. See *id.*

Here, the trial court cited specific aspects of defendant’s crimes to justify consecutive sentences. First, the trial court noted that the victim is defendant’s biological daughter. Second, the trial court noted that defendant assaulted the victim at a time when he had her isolated from others who might have protected her. Third, the trial court noted that defendant had inflicted severe emotional trauma on the victim. These reasons are precise and specifically tailored to the circumstances of defendant and his crimes. And given that these reasons illustrate the gravity of defendant’s crimes, the trial court’s decision to impose consecutive sentences does not otherwise fall outside the range of reasonable and principled outcomes.

The trial court sentenced defendant in accordance with the law and imposed a proportional sentence. It did not abuse its discretion in imposing consecutive sentences. Accordingly, we affirm defendant’s sentences.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Stephen L. Borrello

/s/ Brock A. Swartzle