

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALEXANDER JEREMY STEANHOUSE,

Defendant-Appellant.

UNPUBLISHED

December 16, 2021

No. 356080

Wayne Circuit Court

LC No. 11-011939-01-FC

Before: SAWYER, P.J., and RIORDAN and REDFORD, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying resentencing, after remand to that court by our Supreme Court. *People v Steanhouse*, 504 Mich 969 (2019) (*Steanhouse IV*). Defendant was convicted by a jury of assault with intent to commit murder (AWIM), MCL 750.83, and receiving and concealing stolen property less than \$20,000, MCL 750.535(3)(a). The trial court sentenced defendant to 360 months to 720 months (30 to 60 years) in prison for his AWIM conviction, an upward departure from the sentencing guidelines range of 171 to 285 months.

Defendant now appeals the trial court's denial of his motion for resentencing, arguing that the trial court's earlier decision to depart upward from the sentencing guidelines, and to deny resentencing, was unreasonable and constitutes an abuse of discretion. In addition, defendant argues that the allegedly disproportionate sentence violates the prohibitions against cruel and unusual punishment under the United States Constitution, US Const, Am VIII, and cruel or unusual punishment under the Michigan Constitution, Const 1963, art 1 § 16. We disagree and affirm.

I. FACTUAL BACKGROUND

This case has a long history in both this Court and our Supreme Court. Defendant and Antonin (Anton) Valoppi were friends who often smoked marijuana together in Anton's basement where he lived with his parents. On October 16, 2011, defendant went to Anton's home and went into the basement as usual. According to trial testimony, defendant hit Anton over the head and slit Anton's throat while he was unconscious. Anton was able to seek help from his parents, who were upstairs at the time of the attack, while defendant ran from the home. Defendant was

ultimately convicted by a jury of AWIM for the attack on Anton and receiving or concealing stolen property relating to an earlier robbery of Anton's home.

II. PROCEDURAL HISTORY

After his conviction, defendant appealed to this Court, challenging his conviction and sentence on multiple grounds. *People v Steanhouse*, 313 Mich App 1; 880 NW2d 297 (2015) (*Steanhouse I*) (2015). This Court affirmed defendant's convictions, but remanded to the trial court for *Crosby*¹ proceedings because the trial court was not expressly bound by the reasonableness "principle of proportionality" standard from *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), at the time of sentencing. *Steanhouse I*, 313 Mich App at 48-49. Defendant and the prosecutor both sought leave to appeal in our Supreme Court. In *People v Steanhouse*, 500 Mich 453, 459-460; 902 NW2d 327 (2017) (*Steanhouse II*), our Supreme Court affirmed this Court's holding "that the proper inquiry when reviewing a sentence for reasonableness is whether the trial court abused its discretion by violating [*Milbourn's*] principle of proportionality . . ." *Id.* at 459-460 (quotation marks and citation omitted). However, it reversed this Court's decision to remand to the trial court for *Crosby* proceedings because of the upward departure sentence and remanded to this Court to determine whether the departure sentence was reasonable. *Id.* at 460-461.

On remand from our Supreme Court, in *People v Steanhouse (On Remand)*, 322 Mich App 233; 911 NW2d 253 (2017) (*Steanhouse III*), vacated in part 504 Mich 969 (2019), this Court considered the three different three justifications offered by the trial court for the departure sentence—the brutality of the assault, Anton's incapacitation because of drug use, and the friendship between Anton and defendant—to determine whether the trial court's departure was reasonable under the *Milbourn* standard. *Id.* at 236-237. This Court ruled that the first two justifications were improper; however, the final justification, the friendship between defendant and Anton, could be considered as a reason for departure because the prior relationship is not reflected in the guidelines. *Id.* at 240-242. This Court concluded the trial court abused its discretion in applying the principle of proportionality, and reversed and remanded to the trial court for resentencing. *Id.* at 236. Part of the reason for remand, this Court stated, was because "it is unclear whether the court would have departed solely on the basis of the prior relationship between [defendant] and [Anton]." *Id.* at 242-243.

The prosecutor again sought leave to appeal in our Supreme Court. In lieu of granting leave to appeal, our Supreme Court vacated the part of this Court's decision remanding the case to the trial court for resentencing. *Steanhouse IV*, 504 Mich at 969. The Court clarified that this Court "should have remanded for the trial court to either resentence or to further articulate its reasons for departure." *Id.*

Again before the trial court, on remand from our Supreme Court, defendant moved for resentencing, arguing that because the trial court used two invalid justifications when sentencing him, the trial court would no longer be able to justify the departure from the guidelines. The trial court disagreed and denied defendant's motion for resentencing, reiterating that the friendship

¹ *United States v Crosby*, 397 F3d 103 (CA 2, 2005).

between defendant and Anton was an aggravating consideration and showed that defendant was a violent and depraved individual. It further justified its denial of the motion for resentencing by observing that the OV score for defendant exceeded the score contemplated by the sentencing guidelines:

. . . [d]efendant's [prior record variable (PRV)] and OV levels (D, VI) within the 2011 guidelines grid give him a range of 171-285 months, based on 130 OV points and 39 PRV points. But the grid stops at "100+" OV points, and obviously 130 is 30% more than what is required for a level VI [OV] score. Thus, the seriousness of the offense exceeded the top of the grid by 30%; this court exceeded the guidelines by 25%. Moreover, the OVs do not account for [d]efendant's betrayal of his friend. Mathematically, there is about 25% increase from one OV level to the next in the 2011 Class A sentencing grid. Defendant's OV score topped out at a "VI" level. If there were an OV level VII, and if the scores in it increased 25% from the previous (VI) level, those guidelines would be 214-356 months. Assuming that Defendant's betrayal of Anton raised his OV score just one level, Defendant's current sentence would be at the top of that range.

Defendant now challenges the trial court's denial of resentencing in this appeal.

III. PROPORTIONALITY

Defendant first argues that the denial of his motion for resentencing was an abuse of the trial court's discretion because the sentence was not proportional or reasonable. Sentences that depart from minimum sentence guidelines are reviewed by this Court for reasonableness. *People v Lockridge*, 498 Mich 358, 365; 870 NW2d 502 (2015). This Court reviews the reasonableness of a sentence for an abuse of discretion. See *Steanhouse II*, 500 Mich at 459-460. A sentence is unreasonable when the trial court violates the principle of proportionality. *Id.* at 460; see also *Milbourn*, 435 Mich at 636. A trial court's denial of a motion for resentencing also is reviewed for an abuse of discretion. *People v Puckett*, 178 Mich App 224, 227; 443 NW2d 470 (1989). "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *People v Baskerville*, 333 Mich App 276, 287; 963 NW2d 620 (2020).

With regard to sentencing, reasonableness and proportionality are closely tied: "A sentence is unreasonable—and therefore an abuse of discretion—if the trial court failed to adhere to the principle of proportionality in imposing its sentence on a defendant." *People v Lampe*, 327 Mich App 104, 125; 933 NW2d 314 (2019). A trial court must impose a sentence that is "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Id.* (quotation marks and citation omitted). However, a trial court is permitted to depart from the guidelines "when, in [its] judgment, the recommended range under the guidelines is disproportionate, in either direction, to the seriousness of the crime." *People v Walden*, 319 Mich App 344, 352; 901 NW2d 142 (2017), quoting *Milbourn*, 435 Mich at 657.

There are no exact words that a trial court must use to justify a departure. *People v Smith*, 482 Mich 292, 311; 754 NW2d 284 (2008). When a trial court wishes to depart from the sentencing guidelines, it merely "must explain why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been." *Id.* at 304. There are

multiple factors that the trial court may use to determine whether the departure sentence is proportionate, including:

(1) the seriousness of the offense; (2) factors that were inadequately considered by the guidelines; and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation. [*Walden*, 319 Mich App at 352-353 (quotation marks and citation omitted)]

As explained previously, the trial court during the earlier proceedings used three reasons to justify the upward departure. Two of those reasons were invalidated by this Court. But because nothing in the guidelines addressed the "degree of familiarity and trust between [Anton and defendant]," the friendship between defendant and Anton remains a legitimate factor for the trial court to consider when departing from the guidelines. *Steanhouse III*, 322 Mich App at 242.

On appeal, defendant argues that the trial court incorrectly considered Anton and defendant to have been "best friends," when the evidence showed that the two men were merely friends. We disagree and note that Anton's father, Rory, testified that the two men were "best friends," so that characterization has some evidentiary support. Regardless, even if Rory was inaccurate in describing defendant and Anton as "best friends," there is unquestionably sufficient evidence in the record show that the two men were friends. Anton responded affirmatively when asked by the prosecutor whether he and defendant were friends. Rory testified defendant came over to Anton's house "all the time," and the two would hang out in the basement. Further, Rory stated defendant was "Anton's best friend for a while, and he was starting to befriend myself." Given our holding that the trial court may consider this prior relationship between Anton and defendant as a reason for departure, it did not err in doing so on remand. *Steanhouse III*, 322 Mich App at 242.

Moreover, the trial court observed that defendant's 130-point OV score exceeded the 100-point maximum contemplated by the sentencing guidelines and suggested that this differential provided further support for the upward departure. We agree with the trial court in this regard. See *Smith*, 482 Mich at 308 (explaining that when a defendant has an OV score exceeding 100 points, "the court may render a proportionate sentence above the highest minimum" because "the Legislature did not contemplate a defendant with such a high OV score, given that it used 100 OV points as the maximum for the grid").

To summarize, in addition to the 130-point OV score, the trial court properly identified defendant's ruthlessness and lack of conscience exhibited by his decision to befriend Anton, gain his trust, and then betray him by hitting him, stealing from him, and ultimately attempting to kill him. In our judgment, the trial court provided sufficient reasoning to render the departure sentence proportional to the crime and the offender. A proportional sentence is reasonable. See *People v Odom*, 327 Mich App 297, 305; 933 NW2d 719 (2019). Therefore, because the sentence is in accord with the principle of proportionality, and because the trial court was justified in using the

prior friendship between defendant and Anton as the reason for departure, there was no abuse of discretion and resentencing is not warranted.²

IV. CRUEL OR UNUSUAL PUNISHMENT

Defendant next argues the upward departure and the resulting 30-year minimum sentence violates the prohibitions against cruel and unusual punishment under the United States Constitution, and cruel or unusual punishment under the Michigan Constitution. We disagree.

To preserve this argument, defendant was required to “advance a claim below that his sentences were unconstitutionally cruel or unusual . . .” *People v Bowling*, 299 Mich App 552, 557; 830 NW2d 800 (2013). Although defendant made a general objection to his sentence during sentencing, the constitutional question was not raised or addressed by the trial court. Thus, this issue has not been preserved on appeal. *Id.*

This Court reviews an “unpreserved claim for plain error affecting defendant’s substantial rights.” *People v Roscoe*, 303 Mich App 633, 648; 846 NW2d 402 (2014). “Plain error affected the defendant’s substantial rights if (1) there was an error, (2) the error was clear or obvious, and (3) the error prejudiced the defendant.” *People v Heft*, 299 Mich App 69, 78-79; 829 NW2d 266 (2012); see also *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999) (holding that plain error review extends to unpreserved claims of constitutional error). “The third *Carines* element generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings.” *People v Randolph*, 502 Mich 1, 10; 917 NW2d 249 (2018) (quotation marks and citation omitted).

The Eight Amendment to the United States Constitution states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” US Const, Am VIII. Michigan’s Constitution has an important difference in wording and states: “Excessive bail shall not be required; excessive fines shall not be imposed; cruel *or* unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.” Const 1963, art 1 § 16 (emphasis added). “The Michigan Constitution prohibits cruel or unusual punishment, Const 1963, art 1, § 16, whereas the United States Constitution prohibits cruel and unusual punishment, US Const Am VIII. If a punishment passes muster under the state constitution, then it necessarily passes muster

² In addition to the brief filed by his attorney, defendant also argues in his Standard 4 brief that his sentence was unreasonable. However, defendant incorrectly uses federal statutes and caselaw such as *Gall v United States*, 552 US 38; 128 S Ct 586; 169 L Ed 2d 445 (2007), in supporting his argument. In *Steanhouse I*, this Court considered two different options for which test to use in determining the reasonableness of a departure sentence: the federal factors discussed in *Gall* or the principle of proportionality test under *Milbourn*. *Steanhouse I*, 313 Mich App at 47-48. This Court held, and our Supreme Court affirmed, that “the proper inquiry when reviewing a sentence for reasonableness is whether the trial court abused its discretion by violating the principle of proportionality . . .” *Steanhouse II*, 500 Mich at 495-460 (quotation marks and citation omitted). In any event, although defendant uses inapplicable federal law to challenge his sentence, his argument is essentially one of reasonableness. For the reasons already discussed above, this argument lacks merit.

under the federal constitution.” *People v Benton*, 294 Mich App 191, 204; 817 NW2d 599 (2011) (quotation marks and citation omitted).

Defendant has not demonstrated his sentence is cruel or unusual. “In deciding if punishment is cruel or unusual, this Court looks to the gravity of the offense and the harshness of the penalty, comparing the punishment to the penalty imposed for other crimes in this state, as well as the penalty imposed for the same crime in other states.” *Bowling*, 299 Mich App at 557-558 (quotation marks and citation omitted). The shocking nature of the offense has been noted by the trial court and this Court. The record indicates defendant befriended Anton and then stole from him, struck him on the head with a wrench, and slit his throat while he was unconscious.

Defendant offers no evidence that his sentence of 30 to 60 years for AWIM is disproportionate compared to similar assaultive crimes in Michigan or other states. Indeed, defendant does not compare his sentence to other similar cases at all; he only argues the sentence is unconstitutional because it is disproportionate. However, a proportionate sentence is not cruel or unusual punishment. *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008). Thus, defendant’s argument that his 30-year minimum sentence constitutes cruel or unusual punishment fails because, as concluded above, the sentence is proportionate. *Id.* By extension, his argument that his sentence constitutes cruel and unusual punishment fails as well. In a nutshell, defendant has not demonstrated any error, much less plain error, with regard to the constitutionality of his sentence.

V. OV SCORES

In his Standard 4 brief, defendant argues the trial court improperly scored OV 5 and OV 6, a challenge that defendant also brought in his first appeal of right. The trial court assessed 15 points to OV 5, finding that there was sufficient evidence of “[s]erious psychological injury” to Anton’s family because Anton’s parents were in the home when Anton was attacked and saw their distressed son with his throat slashed. MCL 777.35(1)(a); *Steanhouse I*, 313 Mich App at 39. The trial court also assessed 50 points to OV 6, finding defendant premeditated the attack on Anton, meeting the requirement under MCL 777.36(1)(a). According to the evidence presented at trial, it was reasonable to infer that the attack was planned and not spontaneous. *Steanhouse I*, 313 Mich App at 41.

“The law of the case doctrine provides that an appellate court’s decision regarding a particular issue is binding on courts of equal or subordinate jurisdiction during subsequent proceedings in the same case.” *People v Owens*, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 352908); slip op at 7 (quotation marks and citation omitted). Here, the scores of both OV 5 and OV 6 were affirmed by this Court in the earlier appeal. *Steanhouse I*, 313 Mich App at 39-41. Further, in *Steanhouse II*, our Supreme Court did not reverse the OV score factual analysis of *Steanhouse I*. Defendant does not present any arguments on why the law of the case doctrine should not apply here. Because the scoring issue defendant raises in his Standard 4 brief was already decided by this Court in his previous appeal, the law of the case applies, and we are bound by the previous decision in *Steanhouse I*.

VI. CONCLUSION

The trial court did not abuse its discretion by denying defendant's motion for resentencing.
We affirm.

/s/ David H. Sawyer
/s/ Michael J. Riordan
/s/ James Robert Redford