

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANTON REMMINGTON SLANEC,

Defendant-Appellant.

UNPUBLISHED

April 23, 2020

No. 348451

Oakland Circuit Court

LC No. 18-265794-FH

Before: GADOLA, P.J., and STEPHENS and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals, on delayed leave granted,¹ the order revoking his probation and sentencing him to 35 months to 5 years’ imprisonment. Defendant pleaded guilty to domestic violence, third offense, MCL 750.81(4), and assault with a dangerous weapon (felonious assault), MCL 750.82. He was originally sentenced to concurrent sentences of 5 years’ probation and 10 months in jail. Shortly after being released from jail, defendant was charged with violation of his probation and he pleaded guilty. The trial court revoked probation and sentenced defendant to a minimum sentence of 35 months, which was 12 months more than the high end of the sentencing guidelines range. We affirm.

I. BACKGROUND

Defendant’s underlying convictions relate to his ex-girlfriend, KK. She testified at the preliminary examination that defendant entered her car while she was parked in a grocery store parking lot and threatened to “knock [her] out or slice [her]” if she did not drive him to another location. KK drove defendant to his home and observed during the ride that he was carrying a small knife. KK tried to call 911, but defendant took her phone. Defendant then poured an alcoholic beverage on KK’s steering wheel and her legs. When KK pulled into defendant’s driveway, he grabbed her car key from the ignition and “yanked” it out; the key broke inside the

¹ *People v Slanec*, unpublished order of the Court of Appeals, entered May 21, 2019 (Docket No. 348451).

ignition, and defendant threw the key fob outside. After defendant got out her car, KK was able to retrieve her phone and call 911.

Defendant pleaded no contest to domestic violence, third-offense, and felonious assault. At sentencing, the court noted that this offense was defendant's third domestic violence offense against KK, which was "very concerning." Defendant's minimum sentence guidelines range was 7 to 23 months' imprisonment. Pursuant to a *Cobbs*² agreement, defendant was originally sentenced to 5 years' probation and 10 months in jail with 60 days jail credit. The order of probation required defendant not to have any contact with KK, and required that defendant not engage in any assaultive or threatening behavior. The court warned defendant on the record that if he violated his probation he would be sentenced to the Michigan Department of Corrections (MDOC); the judgment of sentence also provided that any violation of probation would result in a sentence to the MDOC. An amended order of probation was later issued permitting limited contact with KK only concerning parenting purposes, as KK was pregnant with defendant's child.

Soon after defendant was released from jail, the prosecutor filed a motion alleging that defendant violated his probation conditions by contacting KK and by engaging in abusive or threatening behavior. At the arraignment, the prosecution noted that one of defendant's prior domestic violence convictions against KK involved kicking her in the abdomen while she was pregnant. At the probation-violation hearing, defendant pleaded guilty to contacting KK but not to the allegation that the contact involved threatening behavior. The trial court then proceeded to sentencing. The court stated that despite being warned multiple times by the court, defendant had "broken the order" of the court and "re-victimized" KK. The court held that it was "in the best interest of justice" to revoke defendant's probation and sentence him to concurrent sentences of 35 months to 5 years' imprisonment with 314 days credit for his domestic violence and felonious assault convictions.

II. STANDARD OF REVIEW

"A sentence that departs from the applicable guidelines range will be reviewed by an appellate court for reasonableness." *People v Lockridge*, 498 Mich 358, 392; 870 NW2d 502 (2015). This review contemplates the principle of proportionality, which requires "sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender," and "the key test is whether the sentence is proportionate to the seriousness of the matter, not whether it departs from or adheres to the guidelines' recommended range." *People v Steanhouse*, 500 Mich 453, 474-475; 902 NW2d 327 (2017) (quotation marks and citations omitted). Factors that a trial court may consider when determining proportionality include:

- (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

² *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

potential for rehabilitation. [*People v Walden*, 319 Mich App 344, 352-353; 901 NW2d 142 (2017).]

Sentencing courts must justify the sentence imposed for purposes of facilitating appellate review. *Steanhouse*, 500 Mich at 470. Although no longer mandatory, sentencing courts must still consult the guidelines range and “take it into account when imposing a sentence.” *Id.* (citation and quotation marks omitted). The standard of review on appeal is an abuse of discretion. *Id.* at 471.

III. ANALYSIS

Defendant argues that the trial court abused its discretion when it exceeded the sentencing guidelines range by 12 months. We disagree. The trial court based its departure on factors not contemplated by the guidelines, and the court adequately explained why the imposed sentence was proportionate to the offense and offender.

To begin, the trial court’s reasons for deviating from the guidelines, including defendant’s multiple prior domestic violence assaults against KK, were not contemplated by the sentencing guidelines. Indeed, we have acknowledged that the “relationship between the victim and the aggressor” is not a factor not taken into account by the guidelines. *Walden*, 319 Mich App 352-353. The trial court scored 10 points for Offense Variable (OV) 10, which contemplates whether “[t]he offender exploited a . . . domestic relationship . . .” MCL 777.40. But this OV does not contemplate multiple domestic relationship offenses against the same individual, as noted by the trial court at sentencing. The trial court assessed five points each for OV 1 and OV 2, which contemplate the aggravated use of a weapon and the lethal potential of a weapon possessed or used, respectively. MCL 777.31; MCL 777.32. Neither of these OVs contemplate multiple violent offenses toward an individual.

The trial court also relied on defendant’s “material” probation violation, another factor that is not contemplated by the sentencing guidelines. A trial court may take a probation violation into consideration when resentencing a defendant. See *People v Hendrick*, 472 Mich 555, 562-563; 697 NW2d 511 (2005). The violation in this case was especially concerning because it involved defendant contacting KK shortly after he was released from jail. Also, the trial court warned defendant that a violation of his probation would result in imprisonment. In addition to defendant’s repeated victimization of KK and his probation violation, the trial court considered defendant’s criminal record, which included three juvenile offenses and 15 adult misdemeanors, including several alcohol related offenses, disorderly conduct, and malicious destruction of property. While defendant’s history was taken into consideration by the scoring of the prior record variables, a sentencing court may consider a defendant’s repeated failure at rehabilitation. See *People v Horn*, 279 Mich App 31, 44-45; 755 NW2d 212 (2008).

In sum, the trial court reasonably determined that the imposed sentence was proportional to the circumstances of the offense and the offender. That is, the court considered that this case involved re-victimization of KK, that the probation violation also pertained to KK, and that

defendant had a lengthy criminal record not fully reflected in the guidelines. Under those circumstances, an upward departure of 12 months from the guidelines was not an abuse of discretion.

Affirmed.

/s/ Michael F. Gadola
/s/ Cynthia Diane Stephens
/s/ Douglas B. Shapiro