

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

STACY WAYNE ROSE, JR.,

Defendant-Appellant.

UNPUBLISHED

May 20, 2021

No. 353947

Wayne Circuit Court

LC No. 17-007584-01-FC

Before: MARKEY, P.J., and M. J. KELLY and SWARTZLE, JJ.

PER CURIAM.

Defendant was convicted by a jury of involuntary manslaughter, MCL 750.321. He was originally sentenced to 10 to 15 years’ imprisonment for the conviction. Defendant appealed by right and argued, in relevant part, that the trial court erroneously assessed two points for prior record variable (PRV) 5, MCL 777.55. This Court affirmed defendant’s conviction but found that PRV 5 should have been assessed zero points, which altered the minimum sentence guidelines range and thus required resentencing. *People v Rose*, unpublished per curiam opinion of the Court of Appeals, issued November 19, 2019 (Docket No. 342633), pp 8-10. On remand, defendant was resentenced to 81 months to 15 years’ imprisonment for his involuntary manslaughter conviction. The original sentence and the sentence on remand represented upward departures from the guidelines ranges. We affirm.

This case arises out of the fatal stabbing of Robert Briscoe, Sr. The facts of the case were previously summarized by this Court in the earlier opinion:

On July 30, 2017, Rose killed Robert Briscoe, Sr. by stabbing him with a knife. Earlier in the day, two of Briscoe’s sons, Garrett and Tyler, had agreed to purchase Adderall pills from Rose, who left the pills in his vehicle with the expectation that the brothers would leave money. The brothers took nine pills, but only paid for two. When Rose discovered the theft, he contacted them, and they offered to meet at a middle school to settle the dispute. Rose instead went with a group of his friends to the brothers’ home where he confronted their mother with a demand that she pay for the stolen pills. She refused. Multiple witnesses testified

that Rose warned the brothers' mother that her son was "a dead man." Later, Rose returned to the Briscoe residence as Garrett and Tyler were returning. Rose was, once again, accompanied by a large group of his friends and associates that he had recruited to go to the residence with him because he did not want to get jumped by the Briscoe brothers. A fight broke out, and after Briscoe came out of his home to try to stop it, Rose fatally stabbed him.

The defense theory was that the killing was an accident or that it was justified because Rose was acting in self-defense. Rose testified that he had been assaulted in an unrelated incident the day before his confrontation with the Briscoes. He claimed that the prior assault—which resulted in him being thrown to the ground and kicked in the face—influenced his state of mind during the July 30 incident. Rose also testified that during the July 30 fight with [the] Briscoe brothers he saw Tyler approaching him with a knife. He stated that he punched Tyler in the face, but then someone punched Rose, momentarily dazing him. When his head cleared, he saw the knife on the ground with Tyler rushing toward it. Rose testified that he pushed Tyler, picked up the knife with his left hand, and then punched Garrett with his right hand. Someone then punched Rose in the temple. Rose did not know who it was, but he made a backhanded swing to get clear of the combatants. When he stopped his swing, he realized that he had stabbed Briscoe. He was scared so he ran to his car, threw the knife over the hood, and left.

The jury acquitted Rose of first-degree murder, but convicted him of involuntary manslaughter. [*Rose*, unpub op at 1-2 (footnote omitted).]

The minimum sentence guidelines range was set at 36 to 71 months, and the trial court imposed a minimum sentence of 10 years, exceeding the top end of the guidelines range by 49 months. Upon correction of the scoring of PRV 5 as dictated by this Court in the original appeal, the guidelines range shifted downward to 29 to 57 months' imprisonment. On resentencing, the trial court imposed a minimum sentence of 81 months' imprisonment for the manslaughter conviction. Accordingly, the trial court again departed upward from the guidelines range but to a considerably lesser extent—24 months. Defendant now appeals the sentence imposed on remand, challenging the upward departure.¹

On appeal, defendant argues that his sentence of 81 months to 15 years' imprisonment constituted an unreasonable and disproportionate sentence, an abuse of discretion, and a violation of federal and state constitutional guarantees against cruel and unusual punishment.

This Court reviews for reasonableness "[a] sentence that departs from the applicable guidelines range." *People v Lockridge*, 498 Mich 358, 392; 870 NW2d 502 (2015). In *People v*

¹ Defendant challenged the initial upward departure in the first appeal; however, "[b]ecause resentencing [was] required, [this Court] decline[d] to review the reasonableness of the court's decision to impose a sentence outside the guidelines range." *Rose*, unpub op at 10 n 3.

Steanhouse, 500 Mich 453, 459-460; 902 NW2d 327 (2017), our Supreme Court provided elaboration on the “reasonableness” standard, stating:

[T]he proper inquiry when reviewing a sentence for reasonableness is whether the trial court abused its discretion by violating the “principle of proportionality” set forth in *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), “which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.”

Factual findings related to a departure must be supported by a preponderance of the evidence and are reviewed for clear error. *People v Lawhorn*, 320 Mich App 194, 208-209; 907 NW2d 832 (2017). For purposes of sentencing, “a court may consider all record evidence, including the contents of a PSIR,^[2] plea admissions, and testimony presented at a preliminary examination.” *People v McChester*, 310 Mich App 354, 358; 873 NW2d 646 (2015).

The key test is not whether a sentence departs from or adheres to the guidelines range but whether the sentence is proportionate to the seriousness of the matter. *Steanhouse*, 500 Mich at 472. “The premise of our system of criminal justice is that, everything else being equal, the more egregious the offense, and the more recidivist the criminal, the greater the punishment.” *People v Babcock*, 469 Mich 247, 263; 666 NW2d 231 (2003). Sentencing judges are “entitled to depart from the guidelines if the recommended ranges are considered an inadequate reflection of the proportional seriousness of the matter at hand.” *Milbourn*, 435 Mich at 661. A sentence within the guidelines might be disproportionality lenient. *Id.* “Where a defendant’s actions are so egregious that standard guidelines scoring methods simply fail to reflect their severity, an upward departure from the guidelines range may be warranted.” *People v Granderson*, 212 Mich App 673, 680; 538 NW2d 471 (1995).³ In *People v Steanhouse*, 313 Mich App 1, 46; 880 NW2d 297 (2015), *aff’d in part, rev’d in part on other grounds* 500 Mich 453 (2017), this Court indicated:

Factors previously considered by Michigan courts under the proportionality standard included, among others, (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. [Citations omitted.]

“[A] trial court must justify the sentence imposed in order to facilitate appellate review, which includes an explanation of why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been.” *People v Dixon-Bey*, 321 Mich App 490, 525; 909 NW2d 458 (2017) (quotation marks and citations omitted). “When fashioning a

² PSIR stands for presentence investigation report.

³ We emphasize, however, that although the guidelines are no longer mandatory, they remain a highly relevant consideration for purposes of exercising sentencing discretion, and trial courts must consult and take into account the guidelines when imposing sentence. *Lockridge*, 498 Mich at 391.

proportionate minimum sentence that exceeds the guidelines recommendation, a trial court must justify why it chose the particular degree of departure.” *People v Smith*, 482 Mich 292, 318; 754 NW2d 284 (2008). We note that our Supreme Court has now held “that due process bars sentencing courts from finding by a preponderance of the evidence that a defendant engaged in conduct of which he was acquitted.” *People v Beck*, 504 Mich 605, 629; 939 NW2d 213 (2019).

In this case, the trial court concluded that the guidelines range did not adequately account for the violent and tragic nature of defendant’s crime. Specifically, defendant’s total offense variable (OV) score of 111 points exceeded the 75+ points required to fall within OV Level VI by 36 points, MCL 777.64, reflecting that the additional 36 points were not fully accounted for by the guidelines.⁴ OV Level VI did not, and could not, fully account for the seriousness of the offense in this case. Defendant would have fallen within the same OV level even were he assessed 75 points instead of 111 points.

Moreover, the trial court observed that defendant was “selling drugs illegally,” “took the law into [his] own hands instead of proceeding through whatever lawful remedies [he] may [have] had,” went to Briscoe’s home and demanded money from Briscoe’s wife, telling her that her son “was a dead man,” went back to Briscoe’s home that same night with two carloads of people, and stabbed Briscoe in the neck with a knife. In addition, the trial court indicated that the evidence proved that defendant brought the knife to Briscoe’s home the night defendant fatally stabbed him, and that after stabbing Briscoe, defendant threw the knife away and told a person to lie about it.

We conclude that the trial court considered appropriate factors in crafting a sentence outside of the guidelines range, providing sufficient justification for the two-year departure. Under the circumstances surrounding the crime and Mr. Briscoe’s death and despite the fact that defendant has apparently behaved in prison and has no criminal history, an 81-month minimum sentence is more than reasonable and proportionate. Therefore, the trial court did not abuse its discretion in sentencing defendant.

Moreover, the sentence imposed by the trial court did not amount to cruel and/or unusual punishment. In *People v Posey*, __ Mich App __, __; __ NW2d __ (2020); slip op at 10, this Court explained

We note that grossly disproportionate sentences may constitute cruel and unusual punishment. *People v Bullock*, 440 Mich 15, 32, 485 NW2d 866 (1992). However, there is a distinction between “proportionality” as it relates to the constitutional protection against cruel and unusual punishment, and “proportionality” as it relates to reasonableness review of a sentence, which is not constitutional in nature. *Id.* at 34 n 17 (“Because the similarity in terminology may create confusion, we note that the constitutional concept of ‘proportionality’ under Const 1963, art 1, § 16 [cruel or unusual punishment prohibition] is distinct from the nonconstitutional ‘principle of proportionality’ discussed in . . . *Milbourn* . . . ,

⁴ None of the other OV levels in MCL 777.64 have a span of points even close to 36 points, ranging from 9 to 24 points. See, e.g., OV Level IV (35 to 49 points).

although the concepts share common roots.”). . . . [A] *proportionate sentence is not cruel or unusual punishment*. [Citation omitted; emphasis added; brackets and ellipses in original.]

Because we have ruled that the sentence of 81 months to 15 years’ imprisonment was proportionate, the sentence necessarily was not cruel and/or unusual.

We affirm.

/s/ Jane E. Markey

/s/ Michael J. Kelly

/s/ Brock A. Swartzle