

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KRISTYN MARIE SIGLER,

Defendant-Appellee.

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UNPUBLISHED

October 14, 2021

No. 353048

Antrim Circuit Court

LC No. 19-005004-FH

Before: REDFORD, P.J., and K. F. KELLY and LETICA, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder (AWIGBH),<sup>1</sup> MCL 750.84; malicious destruction of personal property valued at less than \$200, MCL 750.377a(1)(d); domestic violence, MCL 750.81(2); malicious destruction of a building between \$200 and \$1,000, MCL 750.380(4)(a); felonious assault,<sup>2</sup> MCL 750.82; and resisting or obstructing a police officer, MCL 750.81d(1).<sup>3</sup> The trial court imposed an out-of-guidelines sentence<sup>4</sup> of two years’ probation, with the first five months to be served in county jail, for the AWIGBH conviction, a three-day jail sentence, with credit for time served, for the malicious destruction of personal property, malicious destruction of a building, and resisting or obstructing convictions; a thirty-day jail sentence for the domestic violence conviction;

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<sup>1</sup> Defendant repeatedly struck the victim with a fireplace shovel, causing various injuries.

<sup>2</sup> The dangerous instrument was a violin (or fiddle) that defendant broke over the victim’s head. Although the victim initially reported that defendant had assaulted him with this instrument, at trial, he testified he “was never hit by a fiddle.”

<sup>3</sup> The jury acquitted defendant of a separate count of resisting or obstructing a police officer as to the second responding officer.

<sup>4</sup> The sentencing guidelines recommended a minimum sentence of 29 to 71 months’ imprisonment for the AWIGBH conviction.

and a three-month jail sentence for the felonious assault conviction. Further, the court ordered defendant not to have any contact with the victim's wife and son or their extended family. The trial court did not order restitution as the victim did not request it. The prosecution appeals as of right, challenging the proportionality of defendant's AWIGBH sentence.<sup>5</sup> We affirm.

## I. SENTENCING

Defendant and the victim engaged in an affair for more than five years. The victim was a wealthy, middle-aged married man; defendant, a substantially younger single woman. These offenses arose during a weekend that the two spent at the victim's vacation home.

Defendant became increasingly frustrated with what she believed was the slow pace of the victim's divorce proceeding. The victim, however, had withdrawn his divorce action months earlier, apparently without informing defendant. Moreover, on this particular weekend, defendant discovered an item leading her to conclude that the victim continued to engage in conjugal relations with his spouse. Excessive alcohol use also appears to have contributed to defendant's destructive and assaultive behavior.

At sentencing, the trial court opined that the guidelines' recommendation was "quite high" for the AWIGBH conviction. The trial court further observed that this was not this the typical domestic-violence situation it encountered as the victim was older, more experienced, and not financially dependent upon defendant.

Regardless, the trial court also noted that the prosecution had earlier offered defendant an opportunity to plead guilty to felonious assault and the misdemeanor malicious-destruction offenses in exchange for dismissal of the remaining charges. Defendant, however, declined what the court characterized as a "very fair" offer by the prosecution. If defendant had accepted the prosecution's offer, the sentencing guidelines' recommendation would have been 0 to 17 months' imprisonment.

The trial court further commented that defendant's multiple felony convictions resulted in a 25-point score for Offense Variable (OV) 13. MCL 777.43(1)(c) (continuing pattern of criminal behavior). The trial court viewed defendant's conduct underlying the resisting and obstructing as *de minimus*, and recognized that it affected the points assessed for OV 13 as well as Prior Record Variable (PRV) 7, MCL 777.57(1)(a) (concurrent felony convictions). Removing the effect of that conviction, the trial court determined that the sentencing guidelines' recommendation would be 5 to 23 months. The court determined that such a sentencing range was "far more reasonable . . . given the conduct in question." Accordingly, the trial court imposed a two-year probationary term with five months' incarceration in the county jail.

The prosecution's appeal followed.

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<sup>5</sup> Although the prosecution's brief raised five issues, at oral argument the prosecution withdrew three issues. As to the two remaining issues, the prosecution recognized that if this Court did not determine that resentencing was required, it need not address the prosecution's remaining issue.

## II. DEPARTURE SENTENCE

The prosecution argues that the trial court abused its discretion by imposing a downward departing sentence. We disagree.

This Court reviews a trial court's departure sentence for reasonableness. *People v Walden*, 319 Mich App 344, 351; 901 NW2d 142 (2017). This Court considers "the circumstances of [the] case, the record, and the trial court's statements during sentencing" in assessing the reasonableness of the departure sentence. *Id.* at 351. This Court applies an-abuse-of-discretion standard in determining whether a departure sentence was reasonable. *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Foster*, 319 Mich App 365, 375; 901 NW2d 127 (2017).

The sentencing guidelines are advisory, and although a trial court must "determine the applicable guidelines range and take it into account when imposing a sentence," the court is not required to sentence a defendant within that range. *People v Lockridge*, 498 Mich 358, 365, 391; 870 NW2d 502 (2015). Even so, a trial court must consult and account for the guidelines when sentencing a defendant. *Id.* The principle of proportionality requires that sentences are "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), abrogation recognized by *Steanhouse*, 500 Mich at 453. "[T]he 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[.]" *Steanhouse*, 500 Mich at 475, quoting *Milbourn*, 435 Mich at 661. The trial court must articulate why the departure sentence is "more proportionate to the offense and offender than a different sentence would have been," although the trial court does not need to use specific words to justify its sentence. *People v Smith*, 482 Mich 292, 311; 754 NW2d 284 (2008).

Importantly, "[a] sentencing court may base a departure on a characteristic already taken into account by the sentencing guidelines only if the court finds that the characteristic was given inadequate or disproportionate weight." *People v Jackson*, 474 Mich 996; 707 NW2d 597 (2006). A "defendant's age, work history, . . . and lack of criminal history [are] relevant mitigating facts that support[] a downward departure." *People v Davis*, 196 Mich 597, 600-601; 493 NW2d 467 (1992), overruled in part on other grounds *People v Miles*, 454 Mich 90, 95; 559 NW2d 299 (1997). See also *People v Lee*, 391 Mich 618, 639; 218 NW2d 655 (1974) (quotation marks and citation omitted) (the sentencing judge must consider "the defendant's past life, employment record, criminal record, psychiatric history, if any, and mental and moral propensities.").

Review of the record demonstrates that the trial court did not abuse its discretion in sentencing defendant. While the prosecution stresses the violent and repeated nature of defendant's assaults, *Milbourn* requires the court to impose a sentence "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Milbourn*, 435 Mich at 636. In this case, there is no doubt that defendant assaulted and seriously injured the victim; she also destroyed the victim's and his wife's property. If this case involved only those facts, then the outcome might have been different. But there are mitigating circumstances. As already mentioned, defendant's assaultive behavior surfaced years into her relationship with the victim. And, although voluntary intoxication is not a defense for any of defendant's actions, MCL 768.37,

excessive alcohol use appears to have significantly diminished her self-control. Moreover, on this particular weekend, defendant's behaviors crossed the line after discovery of the item that led her to confront the victim. The victim himself recognized that defendant was "out of control" and the victim's wife reported that defendant was "incoherent" during that weekend.

The victim later advised that he wanted defendant to obtain the help she needed, presumably to address her mental wellbeing, and stated that he did "not want the defendant to go to prison." Indeed, shortly after these incidents, defendant engaged in services with a therapist and psychiatrist. After many months of treatment, defendant's therapist opined that defendant was stable, no longer drinking, and was not "a threat to anyone."

Finally, as observed by the trial court, the conduct underlying defendant's resisting or obstructing conviction was *de minimis*, but greatly impacted both the PRV and OV Levels. Until 2019, defendant, who was young, essentially led a crime-free life and was employed. Although there are certainly facts that would warrant a higher sentence, we cannot say that the trial court abused its discretion in sentencing defendant as it did after consideration of all of the circumstances surrounding this offender and these offenses.<sup>6</sup>

Affirmed.

/s/ James Robert Redford

/s/ Kirsten Frank Kelly

/s/ Anica Letica

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<sup>6</sup> Given our determination that the trial court did not abuse its discretion, we need not reach the prosecution's remaining issue. See footnote 5.