

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROLAND ANTHONY LONGGREAR,

Defendant-Appellant.

UNPUBLISHED

February 24, 2004

No. 244237

Wayne Circuit Court

LC No. 01-012199-01

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his sentence of five to ten years in prison imposed on his jury-based conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. We affirm.

The statutory sentencing guidelines recommended a minimum term range of five to twenty-three months. The trial court found that substantial and compelling reasons existed to exceed the guidelines, noting that defendant was charged with murder in a pending case¹ as a result of the death of a person scheduled to testify in this case, and finding that the pending charge demonstrated that defendant was a danger to society. The trial court sentenced defendant to five to ten years in prison for assault with intent to commit great bodily harm less than murder, and to a consecutive two-year term for possession of a firearm during the commission of a felony, MCL 750.227b.

To constitute a substantial and compelling reason for departing from the guidelines, a reason must be objective and verifiable, must irresistibly attract the attention of the court, and must be of considerable worth in deciding the length of the sentence. The reason for the departure must be articulated by the trial court on the record. MCL 769.34(3). A substantial and compelling reason to merit a departure from the sentencing guidelines must justify the particular departure at issue. *People v Babcock*, 469 Mich 247, 257-261; 666 NW2d 231 (2003).

¹ Defendant was convicted of first-degree murder, MCL 750.316. His appeal in that case is pending in Docket No. 246889.

We review the determination of the existence of a factor for departing from the guidelines for clear error, the determination that a factor is objective and verifiable as a matter of law, and the determination that objective and verifiable factors merited departure from the guidelines for an abuse of discretion. A trial court may depart from the guidelines for nondiscriminatory reasons based on an offense or offender characteristic that was already considered in calculating the guidelines range if the court concludes that the characteristic was given inadequate or disproportionate weight. MCL 769.34(3)(b). We give appropriate deference to the trial court's sentencing determination. *Id.*, 270.

We affirm defendant's sentence. The existence of a pending murder charge was objective and verifiable, as was the fact that the victim was scheduled to testify against defendant in this case. A defendant's attempt to influence the outcome of a case by murdering a witness irresistibly grabs the attention of the court, and is of considerable worth in determining the length of a sentence. *Id.*, 258. The trial court was entitled give this factor enhanced consideration because it was given inadequate weight by the guidelines. MCL 769.34(3)(b). The trial court did not abuse its discretion by departing from the guidelines. The sentence imposed was proportionate. *Id.*, 262-264; *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Affirmed.

/s/ Bill Schuette

/s/ Patrick M. Meter

/s/ Donald S. Owens