

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODOLFO JOSE ALVAREZ,

Defendant-Appellant.

UNPUBLISHED

September 22, 2026

10:13 AM

No. 370815

Ingham Circuit Court

LC No. 20-000317-FC

Before: MARIANI, P.J., and FEENEY and TREBILCOCK, JJ.

PER CURIAM.

Defendant was convicted by a jury of carrying a concealed weapon (CCW), MCL 750.227, and subsequently sentenced as a fourth-offense habitual offender, MCL 769.12, to 90 to 240 months’ imprisonment.¹ Defendant now appeals his sentence by right. We affirm.

I. BACKGROUND

This case arises out of defendant’s involvement in a shooting on March 13, 2020, that resulted in the death of one individual and serious injuries to another.² Defendant had been released from incarceration on an unrelated offense approximately 11 months prior and was on parole for that offense at the time of the shooting. Defendant was arrested on the same day that the shooting occurred, and he remained in custody throughout all of the proceedings that followed.

¹ Defendant was also charged with open murder, MCL 750.316 and MCL 767.71; assault with intent to murder, MCL 750.83; possession of a firearm by a prohibited person, MCL 750.224f(6); first-degree home invasion, MCL 750.110(a)(2); and three counts of possession of a firearm in the commission of a felony, MCL 750.227b. The jury, however, could not reach a verdict on those charges.

² Defendant’s co-defendant, whom the surviving victim identified as the shooter, pleaded no-contest to assault with intent to murder and second-degree murder, MCL 750.317, approximately one year before defendant’s jury trial in this case.

During that time, defendant was charged in a new, unrelated case with assaulting a prison employee, MCL 791.263a(1).

Following a jury trial, defendant was convicted of CCW, and the trial court sentenced defendant as described, departing upward from the advisory minimum sentencing guidelines range of 24 to 76 months' imprisonment. This appeal followed.

II. DISCUSSION

Defendant argues that he is entitled to resentencing because the trial court's upward departure from his advisory minimum sentencing guidelines range was unreasonable and disproportionate. We disagree.

"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). Whether the trial court imposed a reasonable sentence is reviewed for an abuse of discretion. *People v Steanhouse*, 500 Mich 453, 476; 902 NW2d 327 (2017). "An unreasonable sentence amounts to an abuse of discretion and a sentence is unreasonable if the trial court failed to follow the principle of proportionality or failed to provide adequate reasons for the extent of the departure from the sentencing guidelines." *People v Sherrill*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 360133); slip op at 9.

To determine a proportionate sentence, a trial court must consider "the nature of the offense and the background of the offender," and courts may "depart from the guidelines when, in their 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) (quotation marks and citations omitted). In making this determination, the trial court must still consult and duly consider the sentencing guidelines, despite their advisory nature. *Lockridge*, 498 Mich at 391. "There are also four basic sentencing considerations for the trial court: reformation of the offender, protection of society, discipline of the offender, and deterrence of others from committing the same offense." *People v Brcic*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket Nos. 362727 and 366230); slip op at 10 (quotation marks and citation omitted).³ Other relevant factors to consider when applying the principle of 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 potential for rehabilitation. [*Sherrill*, ___ Mich App at ___; slip op at 9 (quotation marks and citation omitted).]

³ These "four basic sentencing considerations" are commonly referred to as the *Snow* factors, as the considerations were first set forth in *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972). *People v Boykin*, 510 Mich 171, 183, 188; 987 NW2d 58 (2022).

The trial court also “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).

In this case, the presentence investigation report (PSIR) indicated that defendant had a significant criminal history, which included, since 2002, one prior felony and two prior misdemeanor adjudications as a juvenile and five prior felony and eight prior misdemeanor convictions as an adult. As a result, defendant had been housed in a juvenile detention center three times, sentenced to jail five times, sentenced to prison twice, and placed on probation twice. The PSIR also indicated that defendant had his probation revoked and was sentenced to jail both times he was on probation because he had committed multiple violations; had committed multiple violations and the instant offense less than a year after being released on parole for an unrelated offense; and had been charged with a new offense due to his misconduct while in custody for the instant offense.

As noted, defendant’s minimum sentencing guidelines range was 24 to 76 months’ imprisonment, with the statutory maximum set at life imprisonment, due to his status as a fourth-habitual offender. The trial court decided to depart upward from the 24-to-76-month guidelines range by 14 months, sentencing defendant to 90 to 240 months’ imprisonment. In explaining its rationale for the departure, the court expressed significant concern about defendant’s prospect for rehabilitation, the dangers defendant posed to the community, and deterrence of both defendant and other members of the community from committing weapons-related offenses in the future:

[P]rior to this offense, you had a number of juvenile offenses, and then we end up with 15 times you’re in front of a court on adult charges, and there is a very clear escalation in here and a lack of respect for your community, for law enforcement, [and] quite honestly for your family and for your children.

We have assault and battery. We have fleeing and eluding, possession of a controlled substance. We have felony firearms, possession of a weapon by a felon. Even as a felon you didn’t get the message, no weapons; stay on the right side of the law. We have an unarmed robbery. And then in prison it looks like . . . prisoner possessing weapons. You have a fascination with weapons. That, to me, is dangerous.

* * *

So I am looking at this with the habitual fourth. I am looking at public safety. I am looking at punishment, and so far none of these punishments that you’ve received have worked.

Rehabilitation, I think a longer stay in prison is a good idea because you do need some rehabilitation behind bars . . .

* * *

[Y]ou continue to carry and use weapons when you are not allowed to do so in violation of the law, a lack of respect for the law, a lack of respect for your family, for your community, for law enforcement, [and] for safety[.] . . . [W]e treasure our safety, and you are violating that every time you break the law.

Deterrence of others I have to consider, so those people who are looking at what's happening to you, if I just follow the guidelines, . . . they're going to say, I can do that time easy, just like you've said

[Y]ou haven't learned. . . . I'm hoping to send a message out to the community.

Protection of society, you haven't cared about that, and I think to let you out in a short amount of time without the rehabilitation that you'll be afforded in prison will be to keep our community unsafe.

The court made clear it was not basing its sentence on any of the conduct that was the subject of the charges on which the jury could not reach a verdict, but expressed its concern that defendant, while in custody for the instant offense, had acquired a new charge for "assaulting a prison employee"; "while I have one file," the court noted, "you're gathering up other files." The court concluded that it "believe[d], based on the *Snow* factors and the circumstances here, the new charges, the escalation, the lack of regard for our community," that 90 to 240 months' imprisonment was "proportional."

Defendant argues that the trial court erred by imposing its departure sentence because the court based the departure on his criminal history, which was already duly accounted for by the scored prior record variables (PRVs) and his habitual-offender status. The trial court, however, did not merely rely on the fact that defendant had a criminal history or was a fourth-habitual offender—factors we agree were already considered by the guidelines. See MCL 777.52; MCL 777.53; MCL 777.55; see also MCL 777.66; MCL 777.21(3)(a), (c). Rather, the court repeatedly stated that it was relying on the *escalation* in defendant's criminal behavior to more violent offenses, particularly ones involving weapons, despite having been repeatedly sentenced to probation, jail, prison, and parole—a consideration that was not itself accounted for by the guidelines. Another unaccounted-for factor considered by the court was that defendant obtained another violent criminal charge while he was in custody for the current offense. The court concluded that defendant's escalating and continued criminality demonstrated that defendant had no regard for the community's safety, had a "lack of respect for the law," had not "learned" from his prior punishments, and needed "a longer stay in prison" to allow for the sort of "rehabilitation behind bars" that would be effective. Accordingly, the trial court based its departure sentence on considerations it found to be unaccounted for or inadequately accounted for by the guidelines, and we see no error in it doing so. See *Sherrill*, ___ Mich App at ___; slip op at 9 (confirming that a court may consider, among other things, "factors that were inadequately considered by the guidelines" and "factors not considered by the guidelines, such as . . . the defendant's misconduct while in custody . . . and the defendant's potential for rehabilitation") (quotation marks and citation omitted).

Defendant also argues that the trial court erred by failing to explain the extent of its chosen departure. The record, however, does not support this claim. The court explained that, given the

continued escalation in defendant's criminality, his failure to "learn[]" from his prior sentences, his continued possession and use of guns in the community, the dangers that resulted from guns in the community, and the importance of deterring others in the community from criminally possessing and using weapons, a minimum sentence of 90 months, which represented a 14-month departure, was "proportional." See *Brcic*, ___ Mich App at ___; slip op at 10. The court concluded that, even when considering defendant's habitual-offender status, "a longer stay in prison [wa]s a good idea because" defendant needed a stronger punishment and would benefit from using the additional time in prison to engage in rehabilitative services, and because the court wanted defendant's sentence "to send a message" to defendant and "to the community." The court further concluded that a lesser sentence would not be sufficient to meet these ends and would leave the "community unsafe." Based on these comments and the extensive discussion that preceded them, we conclude that the trial court adequately explained "why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been[.]" *Dixon-Bey*, 321 Mich App at 525 (quotation marks and citations omitted); see also, e.g., *Walden*, 319 Mich App at 353-355 (concluding that the trial court satisfactorily justified its 13-month departure above the 107-month maximum minimum under the guidelines because the court's "articulation of departure reasons . . . was appropriately directed to proportionality principles" and because "the reasonableness of the departure sentence imposed was more than supported by the record"). Defendant has thus failed to show any grounds to reverse the trial court's imposed sentence.

Affirmed.

/s/ Philip P. Mariani
/s/ Kathleen A. Feeney
/s/ Christopher M. Trebilcock