

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS LEE GREGG,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 178141

LC No. 94-036972-FH

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to breaking and entering an occupied dwelling with intent to commit criminal sexual conduct, MCL 750.110; MSA 28.305, and was sentenced to ten to fifteen years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Although the trial court erred in refusing to apply the sentencing guidelines for the offense of breaking and entering, pursuant to Administrative Order No. 1984-1, 418 Mich lxxx (1984), the error does not require resentencing. Considering that the guidelines do not have a legislative mandate and are "merely a tool to assist sentencing judges in the exercise of their discretion," *People v Milbourn*, 435 Mich 630, 656-657; 461 NW2d 1 (1990), the dispositive question is whether the trial court gave sufficient reasons to justify a departure from the original sentencing guidelines under the proportionality standard. See *People v Fisher*, 442 Mich 560, 581; 503 NW2d 50 (1993); *People v Weathersby*, 204 Mich App 98, 114; 514 NW2d 493 (1994),

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

In this case, defendant's sentence does not violate the principle of proportionality because the trial court articulated several legitimate reasons for the departure. *Milbourn, supra*, pp 635-636; *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). First, the guidelines did not adequately account for the seriousness of the offense. Further, we note that the trial court's consideration of factors not adequately addressed by the guidelines was made more compelling given that defendant pleaded nolo contendere in exchange for the dismissal of the charge of assault with intent to commit criminal sexual conduct. *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990). Moreover, the trial court properly considered uncharged offenses and pending charges in imposing sentence. *People v Ewing (After Remand)*, 435 Mich 443, 446 (opinion by Brickley, J.), 473 (opinion by Boyle, J.); 458 NW2d 880 (1990); *People v Parr*, 197 Mich App. 41, 46; 494 NW2d 768 (1992); *People v Coulter*, 205 Mich App 453, 456; 517 NW2d 827 (1994). Defendant admitted to the victim that he had attempted to rape other women before. Moreover, shortly after defendant was released on bond in the instant case, he was arrested in Kalamazoo County on another CSC charge arising from a breaking and entering of an occupied dwelling. Finally, the trial court noted that defendant confessed to three additional residential breaking and enterings in Muskegon County. Considering the seriousness of the actual offense committed and the background of the offender, we believe that the trial court supplied sufficient reasons for departing from the guidelines.

Affirmed.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.