

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

---

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 175396

LC No. 93-007201

GREGORY W. RUFFIN,

Defendant-Appellant.

---

Before: Bandstra, P.J., and Markman and M. D. Schwartz,\* JJ.

MARKMAN, J. (concurring in part and dissenting in part).

I concur in the majority's opinion with the exception of its decision to remand for a fuller explanation by the trial court in support of its sentencing determination. The defendant's guidelines for second-degree murder are ten to twenty-five years and he has received a "life" sentence.<sup>1</sup>

I would affirm on the grounds that the trial court proffered a quite adequate, although admittedly terse, explanation for its "departure" from the guidelines. The trial court stated at sentencing:

The [victim] is dead. He didn't deserve to die. Mr. Ruffin is going to pay the ultimate price that the law allows for that." [Emphasis supplied.]

I find this to be a more than adequate articulation of a factor justifying an upward departure. "Judges are permitted to depart from the sentencing guidelines, and are required merely to explain their reasons for doing so." *People v Potts*, 436 Mich 295, 302; 461 NW2d 647 (1990). This Court has "rejected assertions that a justification for a departure is inadequate if it amounts to a restatement of a factor included in the guidelines," *People v Morin*, 144 Mich App 142, 144; 372 NW2d 691 (1985); *People v Houston*, 448 Mich 312, 327; 532 NW2d 508 (1995), or that it relates to a factor not taken into account by the guidelines. *People v Kean*, 204 Mich App 533, 537; 516 NW2d 128 (1994). Further, "a judge's failure to find the facts does not require remand where it is manifest that he was

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

aware of the factual issue, that he resolved it and it would not facilitate appellate review to require further explication of the path he followed in reaching the result . . ." *People v Jackson*, 390 Mich 621, 627 n 3; 212 NW2d 918 (1973). In my judgment, where the trial court was manifestly aware of defendant's crime in which he had murdered a man by shooting him in the back with a minimum of five to six gunshots and recognized the realities of the relationship between defendant's actual sentence and the guideline sentencing range, the court's sentencing rationale speaks for itself and offers a satisfactory explanation for its sentence<sup>2</sup>

/s/ Stephen J. Markman

<sup>1</sup> Such a "life" sentence is in reality a sentence of "fifteen years to life". *People v Johnson*, 421 Mich 494, 497; 364 NW2d 654 (1984); MCL 791.234(6); MSA 28.2304(6). Defendant's sentence is squarely within these guidelines and could be presumed therefore to be proportionate. *People v Broden*, 428 Mich 343, 354-5; 408 NW2d 789 (1987). However, under *People v Love*, 214 Mich App 296, 302; 542 NW2d 374 (1995) and *People v Lino*, 213 Mich App 89; 539 NW2d 545 (1995), we are required to treat a parolable "life" sentence as more severe than, and as representing an upward departure from, the determinate sentence represented by defendant's guideline range.

<sup>2</sup> That this Court treats defendant's sentence as a matter of law as an upward departure from the guidelines, note 1 *supra*, and thereby imposes some greater burdens of explanation upon the trial judge, does not seem to me to preclude such judge from nevertheless taking into consideration the realities of his sentencing determination. Further, in the instant case, the court was also cognizant that defendant had pending drug charges against him, which were not taken into consideration by the guidelines, and that defendant admitted at the sentencing that he was, in fact, a drug dealer.