

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID WESLEY DELAUTER,

Defendant-Appellant.

UNPUBLISHED
February 25, 1997

Lapeer Circuit Court
No. 188247
LC No. 91-004372-FC
(AFTER REMAND)

Before: Corrigan, C.J., and Doctoroff and R.R. Lamb,* JJ.

MEMORANDUM.

Defendant appeals after remand the imposition of concurrent terms of twenty to fifty years imprisonment for six convictions of first-degree criminal sexual conduct (CSC I), MCL 750.520b; MSA 28.788(2). The victims were mentally retarded adult residents of a foster care facility that defendant managed. In defendant's previous appeal by right, this Court affirmed defendant's convictions but remanded for resentencing because the sentencing court had scored improperly Offense Variable 12. *People v DeLauter*, unpublished per curiam opinion of the Court of Appeals (No. 147662, issued June 9, 1994). We affirm.

Defendant first argues that the trial court did not articulate specific reasons for exceeding the rescored sentencing guidelines range and that his new sentence is disproportionate. At the resentencing hearing, the court noted the seriousness of the convictions and the vulnerability of the victims. The court also incorporated by reference its remarks from the original sentencing hearing regarding the severity and nature of the crimes and its intent that defendant's sentence preclude him from ever repeating these crimes. The court further noted on the sentencing information report departure evaluation form that the victimization of more than two people should be considered an aggravating factor, although the sentencing guidelines do not take it into account. With its statements at resentencing, its reference to statements made at the original sentencing hearing, and its comments on the departure evaluation form, the court adequately articulated its reasons for departure. MCR 6.425(D)(1); *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987); *People v William R. Johnson*, 187 Mich App 621, 630;

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

468 NW2d 307 (1991). The revised sentence is consistent with the objectives of imposing sentence: discipline of the defendant, protection of society, reformation of the defendant, deterrence of others, and retribution. *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972); *People v Khoury*, 181 Mich App 320, 328-329; 448 NW2d 836 (1989), amended 437 Mich 954 (1991). Based on these factors and even considering defendant's good behavior as a prisoner, defendant's sentence is proportionate to the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Defendant's cancer does not make the reduced sentences disproportionate.

Defendant next argues that the updated presentence investigation report, used at the resentencing hearing, was insufficient because the probation officer did not interview him. We disagree. Counsel represented defendant at the resentencing. Moreover, defendant informed the court of the favorable information that should have been included in the updated report: that he had helped to rescue a guard who suffered a seizure on the prison floor and that he had undergone five operations for cancer and two chemotherapy sessions since he was imprisoned. Thus, the court had accurate information for resentencing. As in *People v Young*, 183 Mich App 146; 454 NW2d 182 (1990), "[t]here is no indication that defendant's sentence was based on anything but accurate information" in spite of the failure to interview defendant for the updated presentence investigation report; therefore, resentencing is not required. *Id.* at 147-148.

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ Richard Ryan Lamb