

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DESEAN D. DONALDSON,

Defendant-Appellant.

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UNPUBLISHED

November 4, 1997

No. 193573

Oakland Circuit Court

LC No. 95-140891-FC

Before: Young, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to thirty-five to seventy years' imprisonment for the second-degree murder conviction, to be served consecutive to a two year prison term for the felony-firearm conviction. He appeals as of right. We affirm, but remand for completion of the Departure Reason section on the sentencing information report.

Defendant argues that the trial court erred in submitting the charge of first-degree murder to the jury because there was insufficient evidence of premeditation and deliberation. While defendant was acquitted of first-degree murder, he nevertheless contends that the submission of that charge to the jury was improper because of the possibility of a compromise verdict. Because defendant did not seek a directed verdict with respect to this charge, this issue has not been preserved for appellate review. *People v Lugo*, 214 Mich App 699, 710-711; 542 NW2d 921 (1995); see also MCR 6.419. Even if the issue had been preserved, we would conclude that the prosecution presented ample evidence to establish first-degree premeditated murder. Testimony at trial indicated that after the victim first refused to give defendant the money that the victim owed him, defendant left the area and returned with a gun. One witness testified that she heard defendant and the victim arguing, and that defendant said, "I'm going to shoot you mother-f-----." Defendant then pulled out the gun, aimed it at the victim, and shot him in the stomach. Based on this evidence, a rational jury could conclude that defendant acted with premeditation and deliberation when he killed the victim. See *People v Coddington*, 188 Mich App 584, 599-600; 470 NW2d 478 (1991).

Defendant also argues that he must be resentenced because his thirty-five to seventy year prison sentence is disproportionate and because the trial court did not adequately articulate its reasons for departing from the sentencing guidelines. We disagree.

Defendant's recommended minimum sentence under the guidelines was ten to twenty-five years' imprisonment. A trial court may depart from the sentencing guidelines recommended range when it is disproportionate to the seriousness of the crime or the defendant's criminal background. *People v Milbourn*, 435 Mich 630, 656-657; 461 NW2d 1 (1990). We conclude that the trial court's decision to depart from the guidelines was justified. Defendant committed a brutal and vicious crime, and afterward fled to Mississippi where he was eventually arrested. Throughout his childhood, defendant was transferred between schools because of fighting and peer problems. Defendant had four previous juvenile convictions. As a result of these offenses, defendant was placed with various juvenile programs, including boot camp. Defendant was involved in serious altercations and received several sanctions throughout his association with these programs. In fact, Children's Village, where defendant was placed following the shooting, requested that defendant be transferred to the Oakland County Jail because of his behavior. In sum, defendant has been engaged in a continuous pattern of criminal behavior, and has demonstrated a lack of remorse and low potential for rehabilitation. In light of these circumstances, defendant's sentence of thirty-five to seventy years' imprisonment is proportionate and therefore not an abuse of discretion. *People v Tolbert*, 216 Mich App 353, 355-356; 549 NW2d 61 (1996).

Defendant contends that the trial court did not adequately articulate its reasons for departing from the guidelines. When departing from the guidelines, the trial court must articulate its reasons for departure both at sentencing and in the sentencing information report. *People v Johnson*, 187 Mich App 621, 630; 468 NW2d 307 (1991). In this case, the trial court noted that it was basing its departure on the reasons stated by the prosecution at sentencing. Further, immediately before imposing defendant's sentence, the court considered similar factors in deciding to sentence defendant as an adult. We conclude that the trial court's articulation on the record was adequate. However, it is necessary to remand this matter because the trial court did not place on the sentencing information report the reasons for its departure from the sentencing guidelines. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987); see also Sentencing Guidelines (2d ed, 1988), p 7.

Affirmed, but remanded for completion of the Departure Reason section on the sentencing information report. We do not retain jurisdiction.

/s/ Robert P. Young, Jr.  
/s/ Stephen J. Markman  
/s/ Michael R. Smolenski