

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

---

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 190984

Recorder's Court

CHARLES WILLIAM BURGESS,

LC No. 95-002287-FC

Defendant-Appellant.

---

Before: Wahls, P.J., and Taylor and Hoekstra, JJ.

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

I concur with the majority's reasoning and conclusions on all issues but the last. Regarding the proportionality of defendant's sentence, I respectfully dissent. This Court reviews the proportionality of sentences for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). A sentence constitutes an abuse of discretion where it is not proportionate "to the seriousness of the circumstances surrounding the offense and the offender." *Id* at 636.

In this case, defendant's forty-year minimum sentence exceeded the guidelines' range of ten to twenty-five years. I recognize that a trial court is entitled to depart from the guidelines whenever the recommended range is an inadequate reflection of the seriousness of the matter at hand. *People v Phillips (On Rehearing)*, 203 Mich App 287, 290-291; 512 NW2d 62 (1994). However, after reviewing the record in this case, I would conclude that the court's departure was not warranted. As the trial court noted, this was an "absolutely senseless" killing: defendant murdered the victim for simply doing his job. However, in my opinion, virtually all murders are senseless, and the senselessness of this particular killing does not set it apart from other second-degree murders. I believe that the trial court's other stated reasons for departure are accounted for in the guidelines.<sup>1</sup> Compare *People v Grady*, 204 Mich App 314, 316; 514 NW2d 541 (1994), and *People v Milton*, 186 Mich App 574, 581; 465 NW2d 371 (1990), remanded on other grounds 438 Mich 852 (1991). Because I believe that the trial court's stated reasons for

exceeding the guidelines were insufficient, I would vacate defendant's second-degree murder sentence and remand for resentencing.

/s/ Myron H. Wahls

<sup>1</sup> The trial court's stated reasons for departure included: "Threat to society" "punishment" "deterrence of others," "seriousness of crime," "rehabilitation," "best interest of justice," "def't's prior background," "senseless nature of this offense," and "terroristic manner of death."