

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY A. HAYES,

Defendant-Appellant.

UNPUBLISHED

December 17, 2002

No. 233589

Calhoun Circuit Court

LC No. 00-003830-FC

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for assault with intent to do great bodily harm, MCL 750.84, carrying a concealed weapon, MCL 750.227, and felony-firearm, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions arose out of a traffic stop, during which defendant pulled a weapon and fired multiple shots at the officer attempting to make the arrest. On appeal, defendant raises two issues regarding his sentence. First, he argues that the court erroneously scored ten points for offense variable 9, which measures the number of victims of an offense. The statute provides that each person who was placed in danger of injury or loss of life is counted as a victim. MCL 777.39(2)(a). Where there was testimony that at least five people were in close proximity to defendant while he was shooting a weapon eight times, the trial court did not clearly err in considering the bystanders as victims where they were placed in direct danger of harm. *People v Chesebro*, 206 Mich App 468, 473; 522 NW2d 677 (1994).

Defendant also argues that the trial court abused its discretion in exceeding the legislative guidelines range for reasons already adequately considered by the guidelines. MCL 769.34(3) provides that a court may depart from the appropriate sentence range if the court has a substantial and compelling reason for the departure. The court cannot base a departure on a characteristic already taken into account in determining the appropriate sentence range unless the court finds that the characteristic has been given inadequate or disproportionate weight. MCL 769.34(3)(b).

A substantial and compelling reason exists only in exceptional cases. *People v Babcock*, 244 Mich App 64, 75; 624 NW2d 479 (2000). To meet the standard, the reason must be objective and verifiable, and keenly grab one's attention as being of considerable worth in deciding the length of the sentence. *Id.*

The trial court did not abuse its discretion in finding that the victim's status as a police officer attempting to make a lawful arrest following a routine traffic stop was a circumstance that was not adequately reflected in the guidelines, and constituted a substantial and compelling reason for the departure. *People v Marshall*, 204 Mich App 584, 589; 517 NW2d 554 (1994). Moreover, although the number of victims is scored in the guidelines, the court could find that it was not adequately weighted based on the nature of the danger presented in this case, where the shooting occurred near numerous businesses during business hours and near private residences.

Affirmed.

/s/ Donald S. Owens

/s/ William B. Murphy

/s/ Mark J. Cavanagh