

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN ANTHONY MCLANE,

Defendant-Appellant.

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UNPUBLISHED

April 18, 2006

No. 259725

Livingston Circuit Court

LC No. 03-013955-FC

Before: Murphy, P.J., and O’Connell and Murray, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his sentence of 25 to 40 years in prison for his plea-based conviction of criminal sexual conduct in the first degree, MCL 750.520b(1)(f). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On November 2, 1997, defendant approached the sixteen-year-old complainant at a car wash and asked her for change. When complainant stated that she did not have any change, defendant told her to come with him. Defendant grabbed her arm and attempted to grab her legs and carry her. Defendant pulled the victim from her car as she struggled, and took her to his truck. Complainant observed some tools, including a saw, and told defendant that she would do anything if he would let her go. He removed her hair accessories, unzipped his pants and stated, “I just need this.” When complainant begged him to let her go, he told her that she would be fine if she complied with his demands. Defendant forced complainant to perform fellatio until he ejaculated. He then told her to leave. Complainant went to a nearby hospital where seminal fluid and hair samples were obtained.

In 2003, DNA matching tied the samples to those placed in a national database after defendant was apprehended while attempting to commit a similar offense in Ohio. The applicable judicial sentencing guidelines<sup>1</sup> recommended a minimum term range of eight to 15 years in prison. The trial court sentenced defendant to 25 to 40 years after it determined that a departure was justified by the random nature of the instant and the Ohio attacks, defendant’s recidivism, and the fact that defendant’s apprehension was due to a fortuitous circumstance.

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<sup>1</sup> The judicial guidelines apply to defendant’s offense because it was committed prior to January 1, 1999. MCL 769.34(1); *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000).

Defendant argues on appeal that his sentence violated the principle of proportionality, and thus constituted an abuse of discretion. We disagree.

Provided permissible factors are considered, appellate review is limited to whether the sentencing court abused its discretion. *People v Odendahl*, 200 Mich App 539, 540-541; 505 NW2d 16 (1993). A sentencing court abuses its discretion when it violates the principle of proportionality. *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990). A sentence must be proportionate to the seriousness of the crime and the defendant's record. *People v Babcock*, 469 Mich 247, 254; 666 NW2d 231 (2003); *Milbourn, supra*. Sentences within the judicial guidelines are presumptively proportionate, *People v Kennebrew* 220 Mich App 601, 609; 560 NW2d 354 (1996), but a sentence that exceeds the guidelines is subject to additional scrutiny. *Milbourn, supra* at 660. While a deviation from the guidelines range may be based on factors already considered in the guidelines calculations, such a deviation must be made with caution. *Id.* at 660, n 27.

We conclude that the trial court's reasons for departure meet the criteria set forth in *Milbourn, supra*, and *Babcock, supra*. The trial court's reasons for departure are objective and verifiable. The severity of the instant and subsequent offenses and the circumstances surrounding the offenses were permissible factors to consider. See *People v Rice (On Remand)*, 235 Mich App 429, 446; 597 NW2d 843 (1999); *People v Oliver*, 242 Mich App 92, 98; 617 NW2d 721 (2000). In addition, the pattern of dangerous behavior evidenced by the current and subsequent Ohio assaults keenly and irresistibly grabbed the attention of the trial court. The trial court correctly noted that two assaults of this type in public settings on young women are highly unusual. The obvious pattern to defendant's crimes, as well as his comments during the offense, indicate a lack of impulse control that properly carried considerable weight in determining the appropriate length of defendant's sentence.

Nor were the circumstances in the instant case adequately addressed in either the guidelines or in defendant's habitual offender status. Because defendant was not apprehended for the instant offense until after he had been convicted of the subsequent offense and had served his sentence, he has effectively escaped treatment as a habitual offender in either jurisdiction. Moreover, while the guidelines address certain repeat offenders, we agree with the trial court that this case qualifies as an exceptional one to which the guidelines do not neatly apply. We further agree that the sentence is proportionate given the particular circumstances of the offense and the offender.

Affirmed.

/s/ William B. Murphy  
/s/ Peter D. O'Connell  
/s/ Christopher M. Murray