

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CORBIN D. ROYSTON,

Defendant-Appellee.

UNPUBLISHED

May 7, 1999

No. 205096

Eaton Circuit Court

LC No. 97-020062 FC

Before: Gage, P.J., and Gribbs and Hoekstra, JJ.

PER CURIAM.

The people appeal by leave granted from the judgment of sentence entered on defendant's plea-based convictions of three counts of armed robbery, MCL 750.529; MSA 28.797, challenging the trial court's downward departure from the five to ten-year guideline sentence range to impose concurrent sentences of three to ten years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court indicated that it departed from the guidelines range because defendant had been assigned a large number of points under the guidelines for the actions of his co-defendant. This is true of defendant's score of twenty-five points under OV 2 for "terrorism," which resulted in a total offense variable score at the minimum fifty points necessary to place defendant within the fourth offense severity level of the sentencing grid, increasing defendant's resultant guideline sentence range from two to six years to five to ten years. The trial court's other stated reasons for departure were defendant's potential for rehabilitation, his remorse and his cooperation with the police.

Plaintiff argues that the trial court's sentencing decision was based upon inaccurate information regarding plaintiff's cooperation. We disagree. Defendant turned himself in to the authorities and admitted his involvement in the offenses. Although defendant initially declined to identify his accomplice, for fear of retaliation, and may have initially declined a plea offer conditioned upon testifying against his accomplice, the prosecuting attorney indicated on the record at the plea proceeding that defendant ultimately "agreed to testify against the co-defendant in this matter." Later, at sentencing, after the co-defendant decided to plead guilty, the prosecuting attorney asserted that "[a]t no time did we ever have

a solid agreement that this defendant would testify against the co-defendant,” but this is not consistent with the prosecuting attorney’s earlier remarks.

Plaintiff also objects that the trial court was mistaken regarding defendant’s eligibility for boot camp. However, the trial court’s discussion of defendant’s boot camp eligibility arose in the context of explaining the court’s prior *Cobbs* statement, not the court’s articulation of reasons for the sentence imposed.

We are unpersuaded by plaintiff’s citation to the sentence of eighteen years four months to thirty years received by the co-defendant as a basis for challenging the proportionality of defendant’s sentence. There is nothing to indicate that the co-defendant’s case involved the kind of mitigating factors identified by the trial court in this case. Because the trial court identified legitimate factors for departure not adequately weighed within the guidelines and imposed sentences that reasonably reflect the seriousness of the circumstances surrounding the offense and the offender, we find no abuse of discretion here. *People v Castillo*, 230 Mich App 442; 584 NW2d 606 (1998).

Affirmed.

/s/ Hilda R. Gage

/s/ Roman S. Gibbs

/s/ Joel P. Hoekstra