

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHIMARIO REEDUS,

Defendant-Appellant.

UNPUBLISHED

October 14, 2004

No. 247040

Wayne Circuit Court

LC No. 02-006384

Before: Cavanagh, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of felon in possession of a firearm, MCL 750.224f. We affirm.

Defendant's sole issue on appeal is that the trial court abused its discretion in finding a substantial and compelling reason to support its upward departure from the statutory sentencing guidelines minimum range of fourteen to thirty-six months, as a second habitual offender, to the four to seven and one-half-year disproportionate sentence actually imposed. We disagree.

Under the sentencing guidelines statute, a trial court may not depart from the recommended minimum sentence range unless it finds on the record a substantial and compelling reason for that departure. See MCL 769.34(3); *People v Babcock*, 469 Mich 247, 255; 666 NW2d 231 (2003). Any factors relied on by the trial court as constituting a substantial and compelling reason in support of departure must be objective and verifiable, the existence of which is reviewed by this Court for clear error. MCL 769.34(3); *Babcock, supra* at 257-259. Such factors must not include "an offense characteristic or offender 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). Departures are appropriate where a sentence within the guidelines range is not proportionate to the seriousness of the offense. *Babcock, supra* at 264. Whether a departure factor is objective and verifiable is reviewed de novo as a matter of law and that it presents a substantial and compelling reason to depart from the sentencing guidelines is reviewed for an abuse of discretion. *Id.* at 264-265.

Here, defendant was on trial on charges of felony-murder, felony firearm, and felon in possession as a consequence of a death that occurred at defendant's drug house after defendant shot a customer in the head who allegedly intended on robbing defendant of some drugs.

Although the victim was still alive after the shooting, defendant took money from the unconscious victim's pockets, as well as his car keys, and left the house in the victim's vehicle. The following day, defendant was arrested driving the victim's vehicle. The jury returned a guilty verdict only as to the charge of felon in possession. In sentencing defendant to a departure sentence, the trial court articulated several factors it considered, including that (1) the evidence presented at trial was extremely compelling with regard to the felony murder and felony firearm charges, (2) defendant has had numerous contacts with the criminal justice system, (3) previous convictions include, at the age of 15, three counts of armed robbery and, in 1998, an assault with a dangerous weapon, and (4) after shooting the victim in the head, defendant went through the unconscious victim's pockets and took his possessions—which illustrates that defendant has “absolutely no regard for other human beings.” See *id.* at 259, n 13.

After review of the record, we conclude that the factors relied on by the trial court are objective and verifiable and constitute a substantial and compelling reason for departure. First, the trial court was not precluded from considering the evidence presented at trial and concluding that it preponderated in favor of defendant's culpability on the felony murder and felony firearm counts for sentencing purposes. See *People v Compagnari*, 233 Mich App 233, 236; 590 NW2d 302 (1998). The trial court also properly considered defendant's significant criminal history and contacts with the criminal justice system. Defendant had three convictions as a juvenile arising from the use of a firearm (armed robbery) for which he was sentenced to four years probation and was placed in a training facility. Then, as an adult, defendant was convicted again of an assaultive crime involving the use of a dangerous weapon (felonious assault) for which he served a maximum prison sentence of over three years. We agree with the trial court—defendant's illustrated irresistible urge to employ the use of firearms and weapons to assault or otherwise accomplish his criminal objectives coupled with his demonstrated inability to be reformed or to abide by the law were not adequately scored in the guidelines. See *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997); *People v Armstrong*, 247 Mich App 423, 425; 636 NW2d 785 (2001). Finally, after shooting the victim in the head for allegedly attempting to rob defendant of his drugs, defendant rifled through the victim's pockets and left the scene, and the victim to his fatal injuries, in the victim's own vehicle. As the trial court noted, these circumstances of the offense were not addressed by the guidelines. We also conclude that defendant's departure sentence is proportionate to the seriousness of the offense considering the offender. See *Babcock, supra* at 262.

Finally, defendant's argument pertaining to the constitutionality of MCL 769.34(10) is moot, as the trial court's departure from the sentencing guidelines is reviewable by this Court pursuant to MCL 769.34(3).

Affirmed.

/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter