

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STERLING DELANO JONES,

Defendant-Appellant.

---

UNPUBLISHED

September 22, 2005

No. 254261

Wayne Circuit Court

LC No. 03-010018-01

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his sentences following jury convictions for assault with intent to commit great bodily harm less than murder, MCL 750.84, assaulting a police officer causing serious impairment, MCL 750.81d(3), possession of a short-barreled shotgun, MCL 750.224b, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to concurrent terms of twelve to twenty years' in prison for assault with intent to commit great bodily harm less than murder, twenty to thirty years' for assaulting a police officer, two to seven years' for possessing a short-barreled shotgun, and two to seven years' for felon in possession of a firearm. He also received a consecutive two-year sentence for felony-firearm. Because the trial court sentenced defendant as a third habitual offender and sufficiently articulated substantial and compelling reasons for departure, we affirm defendant's convictions and sentences, but remand for completion of a sentencing information report departure evaluation. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions stem from a shooting on August 14, 2003 in Hamtramck during the power blackout that affected a large portion of the Midwest. Defendant shot a police officer with a 12-gauge short-barreled shotgun. The officer was seriously wounded, and may never be able to return to work as a police officer. Defendant did not testify at trial. However, the prosecutor introduced the signed statement he gave to police. Defendant stated that the shooting itself was accidental, but admitted that he had driven to Hamtramck with acquaintances while armed with the weapon in order to "retaliate" against others who had previously engaged in a drive-by shooting at his residence.

First, defendant argues that the trial court erred by imposing sentences with maximum terms in excess of those authorized by statute for the assault convictions and the possession convictions. We disagree. Defendant was charged as a third habitual offender, MCL 769.11.

During sentencing, defense counsel acknowledged as much. MCL 769.11 provides in pertinent part:

(1) If a person has been convicted of any combination of 2 or more felonies or attempts to commit felonies, whether the convictions occurred in this state or would have been for felonies or attempts to commit felonies in this state if obtained in this state, and that person commits a subsequent felony within this state, the person shall be punished upon conviction of the subsequent felony and sentencing under section 13 of this chapter as follows:

(a) If the subsequent felony is punishable upon a first conviction by imprisonment for a term less than life, the court, except as otherwise provided in this section or section 1 of chapter XI, may sentence the person to imprisonment for a maximum term that is not more than twice the longest term prescribed by law for a first conviction of that offense or for a lesser term.

Thus, the trial court was permitted to sentence defendant to up to twice the normal statutory maximums for his convictions. Defendant has not shown that the trial court's sentencing decision was erroneous.

Next, defendant argues that the trial court erred when it departed from the sentencing guidelines during sentencing. We disagree. In reviewing a departure from the guidelines range, the existence of a particular factor is a factual determination subject to review for clear error, the determination that the factor is objective and verifiable is reviewed as a matter of law, the determination that the factors constituted substantial and compelling reasons for departure is reviewed for an abuse of discretion, and the amount of the departure is reviewed for an abuse of discretion. *People v Babcock*, 469 Mich 247, 264-265; 666 NW2d 231 (2003); *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). In ascertaining whether the departure was proper, we must defer to the trial court's direct knowledge of the facts and familiarity with the offender. *Babcock*, *supra* at 270.

A court may depart from the sentencing guidelines range if it has a substantial and compelling reason to do so, and states the reasons for departure on the record. MCL 769.34(3); *People v Hegwood*, 465 Mich 432, 439; 636 NW2d 127 (2001). A court may not depart from a sentencing guidelines range based on an individual's gender, race, ethnicity, alienage, national origin, legal occupation, lack of employment, representation by appointed legal counsel, appearance in propria persona, or religion, nor may it base a departure on an offense characteristic or offender characteristic already considered in determining the guidelines range unless the court finds, based on facts in the record, that the characteristic was given inadequate or disproportionate weight. MCL 769.34(3); *People v Hendrick*, 261 Mich App 673, 682; 683 NW2d 218 (2004), *aff'd in part and rev'd in part* 472 Mich 555 (2005); *People v Babcock*, 250 Mich App 463, 466; 648 NW2d 221 (2002), *rev'd on other grds* 469 Mich 247 (2003). Factors meriting departure must be objective and verifiable, must keenly attract the court's attention, and must be of considerable worth. *Babcock*, *supra* at 257-258. To be objective and verifiable, the factors must be actions or occurrences external to the mind and must be capable of being confirmed. *Abramski*, *supra*. In addition, we must review a departure from the guidelines range to determine whether the sentence imposed is proportionate to the seriousness of the defendant's conduct and his criminal history. *Babcock*, *supra* at 262 n 20, 264.

Defendant's longest minimum sentence of twenty years' in prison is a significant departure from the 150-month (twelve and one-half years) maximum sentence under the scoring grid for the offense. However, under these circumstances, we do not find the trial court's decision an abuse of discretion. The trial court gave as its first reason for departure the circumstances surrounding the offense. These included the fact that the crime occurred during a blackout, the fact that defendant was armed with a weapon designed only for one purpose, i.e., to kill and maim, the nature of the chase, the deliberate shooting of the officer, and the heinous nature of the injuries inflicted upon the officer. The trial court also noted that defendant had an extensive criminal history for his young age.

These factors are objective and verifiable. *Abramski, supra*. Contrary to defendant's assertion, these factors were not already adequately reflected in the guidelines. Prior Record Variables (PRV) 2 and 7 and Offense Variable (OV) 13 take into account defendant's criminal history.<sup>1</sup> But these variables do not address the aggravating factor of the extent of this history given defendant's young age. In addition, we have held that, while OV 1, MCL 777.31, considers whether a firearm was discharged at or toward a human being, and OV 3, MCL 777.33, considers whether a victim suffered bodily injury, neither directly considers someone actually being shot. *People v Lowery*, 258 Mich App 167, 171; 673 NW2d 107 (2003). "Injury to a victim as a result of being shot is in fact a substantial and compelling reason to depart from the guidelines," and "[t]he degree of the injury and the nature of the shooting are significant factors." *Id.* (citations omitted). The sentencing guidelines did not take the state of emergency in effect at the time because of the blackout into account. Perhaps most importantly, the guidelines did not adequately reflect the fact that defendant admitted that he started these events in motion when he deliberately armed himself and traveled to Hamtramck with the specific intent to exact revenge through assault or murder.<sup>2</sup>

We further hold that the sentence as a whole was proportionate to the offense and the offender. The entirety of defendant's actions indicates an extreme disregard for human life. The damage done to the police officer's life and career is irreversible. We affirm the trial court's sentencing decision.

---

<sup>1</sup> See MCL 777.52, MCL 777.57 and MCL 777.43, respectively.

<sup>2</sup> The trial court also found defendant's lack of any work history troubling and felt that defendant had done nothing to contribute to society. A defendant's work history has been recognized as a proper sentence departure factor. See *People v Daniel*, 462 Mich 1, 7; 609 NW2d 557 (2000). Arguably, this factor was improperly considered. MCL 769.34(3). Defendant does not discuss the propriety of the trial court's reliance on his lack of work history. If a trial court articulates multiple reasons for a departure, and we determine that some of the reasons are invalid, we must determine whether the trial court would have departed, and would have departed to the same degree, on the basis of the valid reasons alone. *Babcock, supra* at 260, 273. Even if we consider this factor to be invalid, having reviewed the record and scrutinized the sentencing transcript, we are satisfied that the trial court would have imposed the same sentence on the basis of other factors discussed above.

Although the trial court articulated its reasons for departure on the record, it failed to complete the required sentencing information report departure evaluation. *People v Armstrong*, 247 Mich App 423, 426; 636 NW2d 785 (2001). Accordingly, remand of this case to the trial court is appropriate in order for it to perform the ministerial task of completing a departure evaluation. *Id.*

Affirmed, but remanded for completion of a sentencing information report departure evaluation. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Pat M. Donofrio