

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CAROL ANN ACKELS,

Defendant-Appellant.

UNPUBLISHED

October 4, 2005

No. 254133

Ingham Circuit Court

LC No. 02-001027-FC

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant appeals by right her forty- to sixty-year prison sentence imposed on her plea-based conviction of second-degree-murder, MCL 750.317. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant admitted to entering the home of her twenty-two-year-old daughter and shooting her several times, causing her death. At sentencing, the trial court determined that the sentencing guidelines called for a minimum sentence ranging from 144 to 240 months in prison. The court exceeded this guidelines' recommendation for the following reasons: (1) defendant repeatedly told different stories and lied about what occurred during the shooting; (2) although it had not been served on her, defendant knew that a valid personal protection order (PPO) requiring her to stay away from her daughter existed and yet she knowingly violated the order; (3) the impact of the victim's death on her friends, family, and the community; and (4) but for defendant's actions following the shooting (i.e., falsely reporting that she had been shot by the victim and failing to reveal that she had in fact shot the victim), the victim might have received prompt medical attention and survived.

Defendant asserts that she is entitled to resentencing because the second and third reasons the trial court gave for departing from the sentencing guidelines' recommendation are not objective and verifiable.

A defendant has a right to appeal when a minimum sentence imposed is longer or more severe than the appropriate sentence guidelines range. MCL 769.34(7), (10); *People v Kimble*, 470 Mich 305, 311; 684 NW2d 669 (2004). We review for clear error the trial court's determination that a particular factor exists. *People v Babcock*, 469 Mich 247, 264; 666 NW2d

231 (2003). We review de novo whether a factor is objective and verifiable. *Id.* We review for an abuse of discretion the trial court’s determination that the objective and verifiable factors present in a particular case constitute substantial and compelling reasons to depart from the guidelines recommended minimum sentence. *Id.* at 264-265. A trial court abuses its discretion when it “chooses an outcome falling outside [the] principled range of outcomes.” *Id.* at 269.

Generally, a trial court must impose a minimum sentence within the guidelines recommended range. MCL 769.34(2); *People v Lowery*, 258 Mich App 167, 169-170; 673 NW2d 107 (2003). But, “if the court has a substantial and compelling reason for . . . departure and states on the record the reasons” for doing so, it may depart from the appropriate guidelines range. MCL 769.34(3); *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). A “substantial and compelling reason” is one that is “objective and verifiable,” that “‘keenly’ or ‘irresistibly’ grabs our attention,” and is “of ‘considerable worth’ in deciding the length of a sentence.” *Babcock, supra* at 257-258, citing *People v Fields*, 448 Mich 58, 62, 67-68, n 12; 528 NW2d 176 (1995). Such reasons exist only in exceptional cases. *Id.* To be “objective and verifiable,” a reason for departure must consist of “actions or occurrences that are external to the minds of the judge, defendant, and others involved in making the decision and must be capable of being confirmed.” *Abramski, supra* at 74.

In this case, the first of the trial court’s reasons for departure challenged by defendant — that she violated a PPO — is based on objective and verifiable information. MCL 600.2950(1) permits a petitioner to obtain a PPO against “an individual residing or having resided in the same household as the petitioner.” The PPO “is effective and immediately enforceable anywhere in this state when signed by a judge.” MCL 600.2950(9). On May 6, 2002, an ex parte PPO was issued that prohibited defendant from entering onto the property where the victim lived.

Nevertheless, defendant contends that under MCL 600.2950(18), the PPO must be served on the person restrained or enjoined before it is effective, and, MCL 600.2950(22) states that if the person restrained or enjoined has not received notice of the PPO, law enforcement officers must give the individual an opportunity to comply with the order before making a custodial arrest. Defendant asserts that because officers could not have immediately arrested her for violating the PPO, the trial court erred in finding that she violated the order on the evening of the shooting.

Defendant’s argument ignores the plain language of the statute. After describing the procedures available for serving a PPO, MCL 600.2950(18) further provides:

This subsection does not prohibit the immediate effectiveness of a personal protection order or its immediate enforcement under subsections (21) and (22).

Although officers could not have arrested defendant without giving her a chance to comply with the order, that does not mean that the PPO was invalid or that the trial court erred in concluding that defendant was in knowing violation of it when she shot the victim.

The second factor defendant challenges similarly constitutes an objective and verifiable reason for departing from the sentencing guidelines’ recommendation. The trial court

determined that the guidelines did not adequately account for the impact of the victim's death on her family, friends, and the community. The court referenced statements from family members at sentencing and a letter signed by eighteen of her former co-workers. Although the statements and letter expressed the subjective views of people close to the victim, they are external to the mind of the sentencing judge, and their existence can be confirmed. *Abramski, supra* at 74. They therefore provide objective and verifiable evidence of the impact of the victim's death on the community.

Each of the four reasons the trial court provided constitutes objective and verifiable reasons for exceeding the sentence called for under the guidelines. Although defendant asserts that her sentence is disproportionate, she does not argue that the reasons cited are not otherwise "substantial and compelling" reasons for departure. Consequently, we affirm defendant's sentence.

We affirm.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Jane E. Markey