

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
July 16, 2015

v

CHRISTOPHER JULIAN LANE,

Defendant-Appellant.

No. 322445
Genesee Circuit Court
LC No. 11-028262-FC

Before: HOEKSTRA, P.J., and JANSEN and METER, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felon in possession of a firearm (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, but found not guilty of open murder, MCL 750.316. The trial court departed from the recommended sentencing range under the legislative guidelines, and defendant was originally sentenced, as a third habitual offender, MCL 769.11, to 80 to 120 months' imprisonment for felon-in-possession and a mandatory two-year minimum for felony-firearm to be served consecutive to and preceding the felon-in-possession sentence. Defendant appealed as of right to this Court, and we affirmed defendant's convictions but remanded for resentencing. On remand, defendant was resentenced as a third habitual offender, MCL 769.11, to 60 to 120 months' imprisonment for felon-in-possession (still an upward departure from the minimum guidelines range). Defendant now appeals as of right, challenging the sentence imposed by the trial court during resentencing. For the reasons explained in this opinion, we affirm.

I. BASIC FACTS AND DEFENDANT'S FIRST APPEAL

Defendant's convictions relate to the fatal shooting of Omar Richard. In a previous opinion, this Court briefly summarized the basic facts as follows:

In July 2010, [defendant] shot and killed Omar Richard during an altercation. Although the evidence was conflicting as to whether [defendant] initiated the altercation, there was no dispute that [defendant] brought a firearm to the location and that he did not have the right to possess a firearm as a result of a prior felony conviction. The sole dispute at trial was whether he acted in self-defense after being fired upon or whether he went to the location at issue with the intent to confront Richard or other persons. The jury determined—at the very

least—that the prosecution failed to establish beyond a reasonable doubt that [defendant] was not acting in self-defense; it also accepted the evidence that [defendant] unlawfully possessed a firearm and possessed a firearm during the commission of a felony. [*People v Lane*, unpublished per curiam opinion of the Court of Appeals, issued October 15, 2013 (Docket No. 309972), p. 1.]

Following defendant’s conviction, as originally scored, the sentencing guidelines range for the felon-in-possession conviction was 19 to 57 months. The trial court departed from this sentencing recommendation and defendant was originally sentenced to 80 to 120 months’ imprisonment. The trial court departed after having found that the guidelines did not take into account (1) the fact that defendant committed several violations while on probation or parole, (2) the “assaultive” nature of several of defendant’s prior convictions, and (3) a juvenile psychological evaluation finding that defendant is predisposed to violence.

Defendant appealed to this Court as of right and moved this Court for a remand so that he might move the trial court for resentencing. Retaining jurisdiction, this Court granted defendant’s “motion to remand pursuant to MCR 7.211(C)(1)” so defendant “may move for resentencing.” *People v Lane*, unpublished order of the Court of Appeals, issued December 11, 2012 (Docket No. 309972). The trial court ultimately denied defendant’s motion for resentencing. However, in denying defendant’s motion, the trial court articulated an additional reason for the sentencing departure, namely the general necessity of deterring violence and protecting the community. During the hearing, the trial court rejected defendant’s contention that OV 3 should have been scored at zero points rather than 100. However, changes were made to the scoring of prior record variables (PRV) 3 and 4 as well as offense variable (OV) 1. Specifically, relevant to the present appeal, OV 1 was reduced from 25 to 5 points.¹ The changes to OV 1 did not affect the offense variable level, but, as a result of the changes to the prior record variables, the recommended guideline range was reduced to 12 to 36 months. Nonetheless, the trial court determined that resentencing was not appropriate.

Following denial of defendant’s motion for resentencing, the case returned to this Court for consideration of defendant’s appeal and this Court affirmed defendant’s convictions. However, relevant to the issues now before this Court, during defendant’s prior appeal, this Court concluded that some, but not all, of the reasons justifying the trial court’s sentencing departure were substantial and compelling. *Lane*, unpub op at 2-4. In particular, this Court concluded that the “assaultive,” i.e. violent, nature of many of defendant’s convictions was not accounted for in the calculating the guidelines range and that this criminal history demonstrated a violent pattern constituting substantial and compelling reason for departure. *Id.* at 3. Likewise, this Court found that defendant’s juvenile psychological report provided substantial and compelling reason for departure, particularly given that it accurately predicted defendant’s future violent conduct. *Id.* In contrast, this Court found that, as articulated by the trial court, defendant’s violations while on parole or probation did not provide a substantial and compelling reason for departure because those violations were, to some extent, already taken into

¹ Defendant argued that OV 1 should be scored at zero points.

consideration in calculating the sentencing guidelines and the trial court did not provide a rationale for relying on these violations (such as a finding that these violations were evidence that defendant was not amenable to rehabilitation). *Id.* at 2-3. This Court also rejected general deterrence and the need to protect the community as factors justifying an upward departure. *Id.* at 4.

Aside from the analysis of the validity of the trial court's reasons for departure, this Court concluded that the trial court had failed to "state how the sentence actually imposed was more proportionate than a sentence within the guidelines range." *Id.* On the record presented, this Court also concluded that it could not determine whether the trial court would have departed to the same extent absent the improper reasons for departure cited by the trial court. *Id.* Under these circumstances, because the trial court had failed to articulate the proportionality of the particular departure imposed and because two of the reasons articulated by the trial court did not justify departure, this Court remanded to the trial court for resentencing. *Id.*

When remanding for resentencing, this Court also specifically rejected defendant's scoring challenges to OV 3. This Court recognized that, pursuant to MCL 777.33(1)(b), OV 3 must be scored at 100 points if "death results from the commission of a crime and homicide is not the sentencing offense." *Lane*, unpub op at 4. Given that homicide was not the sentencing offense in this case and that the record evidence showed that defendant illegally possessed a gun which he used to kill Richard, this Court reasoned that OV 3 was properly scored because "[h]ad [defendant] not violated the law prohibiting his possession of a firearm, he would not have been able to shoot and kill another person." *Id.* at 4-5.

II. RESENTENCING ON REMAND

On remand, the trial court reduced defendant's sentence to 60 to 120 months' imprisonment, which was still an upward departure from the 12 to 36 months recommended minimum sentencing range under the legislative guidelines. The trial court again concluded that substantial and compelling factors warranted an upward departure from the minimum guideline range. In total, the trial court articulated five reasons for departing from the recommended minimum guideline range: (1) defendant's violations while on parole and probation provided objective and verifiable evidence that defendant is not amenable to rehabilitation; (2) the guidelines did not account for the assaultive, dangerous nature of many of defendant's convictions; (3) defendant's recidivism; (4) defendant's misconduct tickets received while in prison for his present convictions; and (5) the fact that defendant initiated the interaction that ultimately resulted in Richard's death. Based on these factors, the trial court imposed a sentence of 60 to 120 months' imprisonment for defendant's felon-in-possession conviction, which was to be served consecutive to defendant's two year felony-firearm sentence.

In reducing defendant's sentence from 80 to 120 months to 60 to 120 months, the trial court briefly considered the departure relative to the recommended minimum sentence under the legislative guideline range. Specifically, the trial court noted that the guideline range had been reduced from 19 to 67 months to 12 to 36 months. Considering this reduction, the trial court concluded that a reduction in defendant's sentence was appropriate, and thus the court ultimately resentenced defendant to 60 to 120 months' imprisonment.

During the resentencing hearing, defendant also again argued that OV 3 was incorrectly scored. The trial court rejected defendant's argument based on this Court's prior conclusion that OV 3 was properly scored. Regarding OV 1, defense counsel indicated that she still believed OV 1 was improperly scored and counsel asked that the trial court correct the sentencing information report (SIR) to reflect the fact that the trial court had previously reduced OV 1 from 25 to 5 points. The trial court complied with this request. Defendant now again appeals to this Court as of right.

III. DEFENDANT'S CURRENT APPEAL

On appeal, defendant challenges the validity of the sentence imposed by the trial court on remand. First, defendant challenges the scoring of OVs 1 and 3. Second, defendant maintains that, contrary to *Alleyne v United States*, ___ US __; 133 S Ct 2151; 186 L Ed 2d 314 (2013), the trial court engaged in impermissible fact-finding when determining defendant's sentence. Finally, defendant contends that the trial court failed to identify substantial and compelling reasons for an upward departure and that the trial court failed to articulate the proportionality of the particular departure imposed. We find each of these arguments to be without merit.

Regarding our review following a remand, as a general matter, "[w]hen a case is remanded by an appellate court, proceedings on remand are limited to the scope of the remand order." *People v Canter*, 197 Mich App 550, 567; 496 NW2d 336 (1992). More specifically, when a sentence is vacated and the matter remanded for resentencing, the case before the trial court is a "presentence posture, allowing for objection to any part of the new sentence." *People v Rosenberg*, 477 Mich 1076; 729 NW2d 222 (2007); *People v Davis*, 300 Mich App 502, 509; 834 NW2d 897 (2013), vacated on other grounds by *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). "As a result, at resentencing, every aspect of the sentence is before the judge de novo." *Davis*, 300 Mich App at 509 (citation omitted). The trial court may "take such action as law and justice may require so long as it is not inconsistent with the judgment of the appellate court." *People v Fisher*, 449 Mich 441, 447; 537 NW2d 577 (1995). That is, under the law of the case doctrine, "this Court's ruling on an issue in a case will bind a trial court on remand and the appellate court in subsequent appeals." *Schumacher v Dep't of Natural Res*, 275 Mich App 121, 127; 737 NW2d 782 (2007).

Regarding defendant's scoring challenges to OVs 1 and 3, "[u]nder the sentencing guidelines, the circuit court's factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence." *Hardy*, 494 Mich at 438. Review of the proper interpretation and application of the sentencing guidelines is de novo. *People v Cannon*, 481 Mich 152, 156; 749 NW2d 257 (2008).

Offense variable 1 assesses points for the "aggravated use of a weapon." MCL 777.31(1). In relevant part, the statute provides:

(1) Offense variable 1 is aggravated use of a weapon. Score offense variable 1 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) A firearm was discharged at or toward a human being or a victim was cut or stabbed with a knife or other cutting or stabbing weapon 25 points

* * *

(e) A weapon was displayed or implied 5 points

To “display” a weapon within the meaning of OV 1 is simply “to show or exhibit; make visible.” *People v Brooks*, 304 Mich App 318, 321; 848 NW2d 161 (2014).

In this case, originally, the trial court scored OV 1 at 25 points. However, it later rejected a score of 25 points, reasoning that OV 1 applied to “use of a weapon” and did not necessarily warrant a score “just by the mere possessing of a weapon.” Thus, although the trial court recognized that defendant fired the gun at Richard, the trial court concluded that firing the gun was not the scoring offense and, because “mere possession” was the charge at issue, 25 points could not be scored. The trial court reasoned that a score of 5 points was nonetheless appropriate because defendant “showed the weapon first to everybody on the street,” and he then went around the block and returned, at which time he “showed it again” and the shooting occurred.

Given testimony that defendant showed his gun to the individuals on the street, the trial court’s factual findings were not clearly erroneous and the score of 5 points was supported by a preponderance of the evidence. See *Hardy*, 494 Mich at 438. In contrast, defendant argues that the trial court’s reason for rejecting the 25-point score also requires rejection of a 5-point score. That is, because OV 1 is scored for the “aggravated use of weapon,” defendant appears to contend that it cannot be scored when the scoring offense involves “mere possession” as opposed to an offense where a gun is “used.” However, such an argument has no basis in the plain language of MCL 777.31. To begin with, nothing in the statute expressly prohibits the scoring of OV 1 when the scoring offense is felon-in-possession, and provisions not included in a statute should not be added by the courts.² See *People v Carruthers*, 301 Mich App 590, 604; 837 NW2d 16 (2013). As written, the statute simply provides that points are to be assessed under OV 1 when, for example, a firearm is discharged at or toward a human being or victim, pointed at or toward a victim, displayed, or implied. MCL 777.31(1). In determining whether such conduct is properly scored, a trial court may properly consider *all* of a defendant’s conduct during the sentencing offense. *People v Chelmicki*, 305 Mich App 58, 72; 850 NW2d 612, 620 (2014). And, because *possession* of a firearm is necessarily “implicit in the use of a firearm,” *People v Moore*, 470 Mich 56, 71; 679 NW2d 41 (2004), it follows that acts which constitute “use” within the meaning of OV 1 occur during possession of a firearm and such acts are thus properly scored under OV 1 incident to felon-in-possession. Indeed, the felon-in-possession statute indicates not only that a felon cannot “possess” a firearm, but that he or she may not “use,

² In contrast, there are select offenses for which OV 1 cannot be scored at 5 points, namely felonious assault and armed robbery. See MCL 777.31(2)(e). Had the Legislature similarly intended to limit the scoring of OV 1 when felon-in-possession was the scoring offense, it would have so specified.

transport, sell, purchase, carry, ship, receive, or distribute a firearm” MCL 750.224f. There is, in short, no merit to defendant’s assertion that the “aggravated use” of a firearm cannot occur in relation to the commission of a felon-in-possession offense.

For similar reasons we reject defendant’s contention that scoring OV 1 in this case violates the rule that, when scoring most offense variables, including OV 1, “only conduct relating to the offense may be taken into consideration[.]” See *People v McGraw*, 484 Mich 120, 124, 129; 771 NW2d 655 (2009) (quotations marks and citation omitted); *Chelmicki*, 305 Mich App at 71-72. The scoring offense was felon-in-possession, meaning that all of defendant’s conduct during this offense may be scored. *Chelmicki*, 305 Mich App at 71-72. Because possession is implicit in the use of a firearm, *Moore*, 470 Mich at 71, defendant’s possession was obviously ongoing during his use of the firearm. His use of the firearm thus related to the sentencing offense and was properly scored under OV 1. Defendant has not shown any error.³

To the extent defendant attempts to challenge the scoring of OV 3, this claim is controlled by the law of the case because, as discussed *supra*, a previous panel of this Court analyzed the scoring of OV 3 and affirmed the trial court’s scoring of this variable at 100 points. “[I]f an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same.” *Fisher*, 449 Mich at 444-445 (citation omitted). The law of the case doctrine does not apply, however, if the facts do not remain materially the same or if there has been a change in the law. *Foreman v Foreman*, 266 Mich App 132, 138; 701 NW2d 167 (2005). In this case, defendant points to no change in the facts or law, and thus we adhere to the law of the case in regard to the scoring of OV 3 as established by this Court’s previous decision.⁴ See *Lane*, unpub op at 4.

³ Indeed, if we were to find any error in the scoring of OV 1, we would agree with the prosecution’s assertion that OV 1 was properly scored at 25 points. The undisputed facts show that defendant shot Richard, making it apparent that “a firearm was discharged at or toward a human being” Because this discharge of the firearm at a human being occurred during defendant’s possession of the weapon for purposes of felon-in-possession, such use would be properly scored under OV 1. See MCL 777.31(1)(a); *Chelmicki*, 305 Mich App at 72.

⁴ We note briefly that, even if we were not bound by the law of the case, we would affirm the trial court’s scoring of OV 3, despite the various challenges raised by defendant on appeal. OV 3 should be scored 100 points when a “victim was killed” and “if death results from the commission of a crime and homicide is not the sentencing offense.” MCL 777.33(1)(a), (2)(b). Defendant maintains that OV 3 should not have been scored because he was acquitted of homicide and his criminal act of possessing a firearm cannot be said to have caused Richard’s death. In contesting causation, defendant argues that OV 3 requires proximate causation, not merely factual causation. But, this argument was specifically rejected in *People v Laidler*, 491 Mich 339, 345; 817 NW2d 517 (2012), wherein the Court explained that OV 3 only requires factual causation. Thus, the relevant inquiry is simply whether defendant’s criminal conduct was a “but for” cause. *Id.* Plainly, “but for” defendant’s illegal possession of a firearm, Richard

Next, defendant also argues that the trial judge engaged in improper judicial fact-finding during sentencing, contrary to *Alleyne*, 133 S Ct at 2151. However, as defendant concedes on appeal, this argument was rejected in *People v Herron*, 303 Mich App 392; 845 NW2d 533 (2013). We are bound by that decision, and we therefore reject defendant's argument in this respect. See MCR 7.215(C)(2).⁵

Finally, defendant challenges the trial court's upward departure from the recommended minimum sentencing range. Defendant maintains the reasons listed by the trial court did not constitute substantial and compelling reasons for departure. Further, defendant argues that the trial court did not adequately explain the proportionality of the particular sentence imposed, and that the sentence is invalid because it is not proportionate.

In order to depart from the sentencing guidelines recommendation, the trial court must articulate substantial and compelling reasons on the record for the particular departure imposed. *People v Smith*, 482 Mich 292, 299, 303; 754 NW2d 284 (2008). The reasons relied on must be objective and verifiable; they must also be "of considerable worth in determining the length of the sentence and should keenly or irresistibly grab the court's attention." *Id.* A court "may not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight." *Id.* at 300 (citation omitted). The substantial and compelling reasons for the departure must be articulated on the record to "allow for effective appellate review." *Id.* at 304.

When considering the trial court's departure from the sentencing guidelines recommended minimum range, this Court reviews a trial court's factual findings for clear error. *People v Young*, 276 Mich App 446, 448; 740 NW2d 347. This Court reviews de novo whether such grounds are objective and verifiable. *Id.* The trial court's ruling as to whether the objective and verifiable grounds to depart are substantial and compelling is reviewed for an abuse of discretion. *Id.* An abuse of discretion occurs where the trial court "selects an outcome that does not fall within the range of reasonable and principled outcomes." *Id.* The extent of the departure is also reviewed for an abuse of discretion, and the trial court abuses its discretion by choosing a sentence that is not proportionate to the offender and the circumstances surrounding the offense. *People v Lowery*, 258 Mich App 167, 172; 673 NW2d 107 (2003).

would not have died, and consequently Richard's death resulted from defendant's criminal act within the meaning of OV 3. Cf. *id.* at 521-522. Further, insofar as defendant claims Richard was not a "victim," the term "victim" refers to "any person who is harmed by the defendant's criminal actions." *Id.* at 523. This broad definition encompasses Richard, who was undoubtedly injured by defendant's illegal possession of a firearm. Cf. *id.*

⁵ *Herron* has been appealed. The Supreme Court is holding that application in abeyance pending the Court's resolution of *People v Lockridge*, 496 Mich 852; 846 NW2d 925 (2014). See *People v Herron*, ___ Mich ___; 846 NW2d 924 (2014). This does not, however, lessen *Herron's* precedential value. See MCR 7.215(C)(2).

As noted, in this case, the trial court articulated five reasons for departure at resentencing. One of those reasons—the assaultive nature of many of defendant’s convictions—was approved by this Court during defendant’s previous appeal. *Lane*, unpub op at 3. We see no changes in the facts or law, and thus we follow the law of the case in regard to whether this factor constituted substantial and compelling reason for departure.⁶ See generally *Fisher*, 449 Mich at 444-445.

Contrary to defendant’s arguments, we are also persuaded that the additional reasons provided by the Court also provide substantial and compelling reason for departure. In particular, in reference to defendant’s violations while on parole and probation, although these violations were to some extent accounted for in the calculation of the guidelines, the trial court more thoroughly explained on remand that these violations evinced defendant’s “inability to conform [himself] to the law while on parole and during probation.” In light of this evidence, the trial court concluded that defendant was “not amenable to rehabilitation.” As a related consideration, the trial court also specifically referenced defendant’s history of recidivism as a reason for departure. Both defendant’s history of recidivism and his lack of potential for rehabilitation provide substantial and compelling reason for departure. These facts have an objective and verifiable basis in light of defendant’s criminal history. See *People v Horn*, 279 Mich App 31, 45-46; 755 NW2d 212 (2008). Further, although a trial court may not speculate about a defendant’s general criminal propensity, “a history of recidivism, and obsessive or uncontrollable urges to commit certain offenses” can be substantial and compelling reasons supporting an upward departure if they are not adequately contemplated by the guidelines. *Id.* at 45. We see no clear error in the trial court’s factual conclusions, and the trial court did not abuse its discretion by relying on these factors.

Similarly, the trial court also relied on misconduct tickets received by defendant while incarcerated as a basis for departing from the guidelines. These facts were not accounted for when calculating the guidelines, and defendant’s continued inability to reform his conduct, as evinced by the receipt of misconduct tickets (one of which involved a razor blade found under defendant’s mattress), provides substantial and compelling reason for departure. See *People v Watkins*, 209 Mich App 1, 5; 530 NW2d 111 (1995) (concluding misconduct tickets provided substantial and compelling reason for departure). Thus, the trial court did not abuse its discretion in relying on these facts as a basis for departure.

The trial court also found substantial and compelling the fact that defendant “initiated the whole thing by driving up and showing your armor and creating the situation.” The court noted that it appeared that the jury concluded “this was a gun battle, that it was a defensive kind of battle.” But, the trial court concluded that it was defendant’s criminal conduct that served as a precursor to the gun battle, and the court explained that “why a crime started in the first place” is

⁶ Although the trial court did not again reference defendant’s psychological evaluation at resentencing, this Court previously approved this rationale and, to the extent defendant again challenges this basis on appeal, this issue is also controlled by the law of the case. See *Lane*, unpub op at 3; see also *Fisher*, 449 Mich at 444-445.

not taken into consideration by the guidelines. Defendant argues that this amounted to judicial fact-finding directly contrary to the jury's acceptance of his self-defense theory and, thus, cannot be a basis to depart. Contrary to defendant's argument, his not guilty verdict with respect to homicide does not demonstrate his actual innocence or the jury's affirmative acceptance of his self-defense claim, and it does not preclude the trial court from considering the circumstances of the crime when sentencing defendant. That is, there are any number of a reasons a jury might return a verdict of not guilty, and, for this reason, "[a] verdict of acquittal demonstrates only a lack of proof beyond a reasonable doubt; it does not necessarily establish the defendant's innocence." *People v Ewing*, 435 Mich 443, 452; 458 NW2d 880 (1990) (opinion by BRICKLEY, J.) (citation omitted). Consequently, when deciding whether to depart from a sentencing recommendation, "[a]lthough a trial court may not make an independent finding of guilt with respect to a crime for which a defendant has been acquitted, and then sentence the defendant on the basis of that finding, the court in fashioning an appropriate sentence may consider the evidence offered at trial . . . including other criminal activities established even though the defendant was acquitted of the charges[.]" *People v Compagnari*, 233 Mich App 233, 236; 590 NW2d 302 (1998). See also *People v Oliver*, 242 Mich App 92, 98; 617 NW2d 721 (2000). There was, in short, nothing improper in the trial court concluding, based on the evidence presented, including defendant's display of an AK-47 assault rifle, that defendant instigated the events leading to Richard's death by "driving up and showing [his] armor." Therefore, the trial court did not abuse its discretion in relying on this as a substantial and compelling basis for departure.

Finally, we reject defendant's contention that the sentence imposed was not proportionate and that the trial court failed to adequately articulate the proportionality of the particular departure. "The principle of proportionality requires that a sentence be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Oliver*, 242 Mich App at 98. See also *Smith*, 482 Mich at 305. As the trial court articulated, the circumstances surrounding the offense were quite serious. Defendant instigated events which eventually led to a gun battle and Richard's death. Moreover, apart from the circumstances of the crime itself, the trial court strongly emphasized defendant's troubling characteristics, including the assaultive nature of defendant's past crimes, his history of recidivism, his lack of potential for rehabilitation as demonstrated by his violations while on parole and probation, and his continuing misconduct while in prison. Given these circumstances surrounding the crime and defendant's characteristics as articulated by the trial court, we see nothing disproportionate in a 60 to 120 month sentence, and thus the extent of the departure was not an abuse of discretion.

Further, contrary to defendant's argument, the trial court sufficiently articulated the basis for the particular departure imposed so as to enable effective appellate review. *People v Babcock*, 469 Mich 247, 259 n 13; 666 NW2d 231 (2003). In explaining the upward departure and the substantial and compelling reasons justifying that departure, the trial court was not required to use a formulaic approach or utter any particular "magic words." *Id.* It was enough that the trial court provided five detailed reasons for the particular departure imposed and that the trial court generally considered the extent of the departure relative to the recommendation under the guidelines, determining, for example, that because the guideline range had been reduced, a reduction in defendant's sentence was also warranted. See *Smith*, 482 Mich at 307-308 (comparing departure sentence to recommended minimum under the applicable sentencing grid). It is clear from the explanation provided by the trial court that the court was cognizant of the

extent of the particular departure imposed and it articulated substantial and compelling reason to justify that particular departure. We see no abuse of discretion in the extent of the departure imposed.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Patrick M. Meter