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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALFONZO GORDON POLLARD,

Defendant-Appellant.

UNPUBLISHED
December 17, 2020

No. 350807
Ingham Circuit Court
LC No. 15-001059-FC

Before: BOONSTRA, P.J., and GADOLA and TUKEL, JJ.

PER CURIAM.

Defendant appeals as of right his sentences of 225 months to 55 years' imprisonment for his convictions of three counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1) (multiple variables). We affirm.

I. FACTS

This case arises out of defendant's sexual abuse of his two biological granddaughters who at the times of the abuse were living in his home. Defendant began to sexually abuse each child when they were approximately 10 years old and escalated the abuse over the course of approximately seven years to include multiple incidents of digital penetration, penetration with a vibrator, sexual intercourse, and oral sex. He also photographed the older child while she was undressed with a camera hidden in the bathroom. After defendant physically abused the older child and threatened to kill her with a baseball bat, she reported the ongoing abuse to a school social worker.

Defendant was convicted of three counts of CSC-I, MCL 750.520b(1)(a); MCL 750.520b(2)(b) (sexual penetration of a victim under 13 years of age by an individual 17 years of age or older), three counts of CSC-I, MCL 750.520b(1) (multiple variables), one count of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(a) (sexual contact with a victim under 13 years of age), and one count of distributing sexually explicit material to a minor, MCL 722.675(1)(a). He was sentenced to serve 25 to 55 years' imprisonment for each CSC-I conviction, 8 to 15 years' imprisonment for the CSC-II conviction, and 14 months to 2 years' imprisonment for the conviction of distributing sexually explicit material to a minor.

At the original sentencing hearing, the trial court noted that three of the CSC-I convictions were subject to the statutory minimum sentence of 25 years' imprisonment under MCL 750.520b(2)(b). The other three CSC-I convictions, arising from counts 2, 3, and 5 (multiple variables), were not subject to the statutory minimum, and the guidelines minimum sentence range for those counts was 135 to 225 months. The trial court nevertheless sentenced defendant to 25 to 55 years' imprisonment for each of the six CSC-I convictions without justifying the upward departure from the guidelines range for counts 2, 3, and 5.

Defendant appealed to this Court, challenging his convictions and sentences. This Court affirmed defendant's convictions, but vacated his sentences for counts 2, 3, and 5 and remanded for resentencing because the trial court failed to articulate its reasons for the departure sentences.[1] On remand, the trial court sentenced defendant within the guidelines minimum sentence range to serve 225 months to 55 years' imprisonment for counts 2, 3, and 5. Defendant again appeals, challenging his sentences for those three convictions.

II. ANALYSIS

Defendant contends that the trial court abused its discretion by imposing the sentences in question upon resentencing. We disagree.

Under MCL 769.34(10),[2] this Court is required to affirm a minimum sentence that falls within the recommended minimum guidelines range unless there was an error in the scoring of the guidelines or the trial court relied upon inaccurate information, *People v Schrauben*, 314 Mich App 181, 196; 886 NW2d 173 (2016), or absent a valid constitutional challenge to the sentence. *People v Posey*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket Nos. 345491, 346039, 351834); slip op at 7-8. In this case, defendant's minimum sentences on the three convictions in question are within the recommended minimum sentencing guidelines range of 135 to 225 months, there is no contention that there was an error in the guidelines scoring or that the trial court relied upon inaccurate information, and defendant raises no constitutional challenges to the sentences. We are thus required to affirm the sentences.

Defendant contends, however, that although the sentences imposed are within the guidelines, this Court should review the sentences because they are unreasonable and disproportionate. A sentence is reasonable if it adheres to the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), which requires that sentences imposed by the trial court "be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Steanhouse*, 500 Mich 453, 459-460; 902 NW2d 327 (2017). A minimum sentence that falls within the sentencing guidelines range is presumed to be proportionate, *People v Odom*, 327 Mich App 297, 315; 933 NW2d 719 (2019), and this Court is

[1] *People v Pollard*, unpublished per curiam opinion of the Court of Appeals, issued July 19, 2018 (Docket No. 338225).

[2] The Supreme Court's decision in *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015), "did not alter or diminish MCL 769.34(10) . . . ." *People v Schrauben*, 314 Mich App 181, 196 n 1; 886 NW2d 173 (2016).

required to review for reasonableness only minimum sentences that depart from the minimum sentencing range recommended by the sentencing guidelines. *People v Anderson*, 322 Mich App 622, 636; 912 NW2d 607 (2018).

To overcome the presumption that a sentence within the guidelines is proportionate, a defendant must demonstrate "unusual circumstances that would render a presumptively proportionate sentence disproportionate." *Posey*, ___ Mich App at ___; slip op at 7. Here, defendant has not identified any unusual circumstances. Defendant argues that his minimum sentences are not proportionate because the trial court failed to consider that he did not have a significant criminal history, was 66 years old at the time of resentencing, and has established a good record in prison. However, defendant's criminal history was considered in the scoring of the guidelines, and in any event, a lack of criminal history is not an unusual circumstance sufficient to overcome the presumption of proportionality. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Similarly, defendant's age is insufficient to overcome the presumption of proportionality of his in-guidelines sentences, see *People v Bowling*, 299 Mich App 552, 558-559; 830 NW2d 800 (2013), and his record in prison is not an unusual circumstance that would render his sentence disproportionate.

Defendant also argues that the trial court did not articulate reasons for the sentences it imposed on remand as required by this Court's remand order. Again, we disagree. A trial court's obligation to articulate its reasons for imposing a sentence is satisfied when the trial court expressly relies on the sentencing guidelines in imposing the sentence. *People v Conley*, 270 Mich App 301, 313; 715 NW2d 377 (2006). Moreover, when resentencing defendant in this case the trial court explained why it believed that the original 25-year minimum sentences were appropriate before ultimately sentencing defendant within the guidelines range. We therefore find no legitimate challenge to the sentences imposed.

Affirmed.

/s/ Mark T. Boonstra
/s/ Michael F. Gadola
/s/ Jonathan Tukel