

Appendix A

Order

Michigan Supreme Court
Lansing, Michigan

March 27, 2020

Bridget M. McCormack,
Chief Justice

160625

David F. Viviano,
Chief Justice Pro Tem

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 160625
COA: 350454
Oakland CC: 2018-268807-FH

MICHAEL GERRELL BOONE,
Defendant-Appellant.

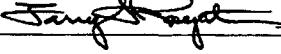
On order of the Court, the application for leave to appeal the October 14, 2019 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 27, 2020

t0323



Clerk

COVER LETTER

11-4-2019

(Put Today's Date)

Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: People of the State of Michigan

(Print the name of the opposing party, e.g., "People of the State of Michigan.")

v Michael Gerrell Boone

(Print the name you were convicted under here.)

Supreme Court No. _____

(Leave blank - the Clerk will assign a number for you.)

Court of Appeals No. 350454

(Get this number from the Court of Appeals decision.)

Trial Court No. 2018-268807-FH

(Get this number from Court of Appeals brief or
Presentence Investigation Report.)

Dear Clerk:

Enclosed please find the original of the pleadings checked below. (Put a check mark by the items you are sending.) I am indigent and can not provide seven copies. Please file them.

- Affidavit of Indigency/Proof of Service
- Motion to Waive Fees and Costs
- Statement of Prisoner Account (this is not necessary in criminal appeals)
- Pro Per Application for Leave to Appeal
- Court of Appeals Decision (You **must** enclose a copy of the Court of Appeals decision.)
- Court of Appeals Brief (This is not necessary, but it is a good idea.)
- Supplemental Court of Appeals Brief (This is not necessary, but it is a good idea.)
- Other _____

Thank you.

Sincerely,

Michael Gerrell Boone
(Sign your name here.)

Michael Gerrell Boone
(Print or type your name here.)

373458
(Print or type your prisoner number here.)

Michigan Reformatory 1342 West Main
(Print or type your address here.)

Seneca, MI 48856
(Print or type your City, State, and Zip Code here.)

Copy sent to:

Oakland County Prosecutor
(Fill in the county where you were convicted.)

INSTRUCTIONS

1. You will need 2 copies and the original of this letter and the pleadings listed above.
2. Mail the original of this letter and all the pleadings listed above to the Supreme Court Court Clerk.
3. Mail 1 copy of letter and pleadings to the prosecutor in the county where you were convicted.
4. Keep 1 copy of letter and pleadings for your file.

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Supreme Court No. _____

(Leave blank)

Plaintiff-Appellee,

Court of Appeals No. 350454

(From Court of Appeals decision.)

v Michael Garrett Boone
(Print the name you were convicted under on this line.)

Trial Court No. 2018-268807-FH

(See Court of Appeals brief or Presentence Investigation Report.)

Defendant-Appellant.

INSTRUCTIONS: Answer each question. Add more pages if you need more space. **NOTE:** If you are appealing a Court of Appeals decision involving an administrative agency or a civil action, you will have to replace this page with one containing the relevant information for that case.

PRO PER APPLICATION FOR LEAVE TO APPEAL

1. I was found guilty on (Date of Plea or Verdict) December 6, 2018
2. I was convicted of (Name of offense) 2 counts 1st-manufacture less than 50 grams C/S
Pass of C/S less than
Narc/cocaine MCL 333.7401244, Pass of C/S meth/est MCL 333.74032B1, 25 grams MCL 740.32B5.
3. I had a guilty plea; no contest plea; jury trial; trial by judge. (Mark one that applies.)

4. I was sentenced by Judge Michael Warren
(Print or type name of judge) on March 13, 2019
(Print or type date you were sentenced)

in the Oakland County Circuit Court to 16 years 6 months
(Name of county where you were sentenced) (Put minimum sentence here)

to 50 years 0 months, and to 16 years 9 months to 15 years 0 months.
(Print or type maximum sentence) (Minimum sentence) (Maximum sentence)

I am in prison at the Michigan Reformatory in Ionia, Michigan.
(Print or type name of prison) (Print or type city where prison is located.)

5. The Court of Appeals affirmed my conviction on October 14, 2019
(Print or type date stamped on Court of Appeals decision)
in case number 2018-268807-FH. A copy of that decision is attached.
(Print or type number on Court of Appeals decision)

6. This application is filed within 56 days of the Court of Appeals decision. (It MUST be received by the Court within 56 days of date on Court of Appeals decision in criminal cases and 42 days in civil cases. Delayed applications are NOT permitted, effective September 1, 2003.)

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Michael G. Boone, Defendant-Appellant

CA No. 350454

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

GROUND - ISSUES RAISED IN COURT OF APPEALS

7. I want the Court to consider the issues as raised in my Court of Appeals brief and the additional information below.

ISSUE 1:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

MR. Boone is entitled to a re-sentencing because his sentence was not reasonable as the trial court abused its discretion by violating the doctrine of proportionality.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- 1. The issue raises a serious question about the legality of a law passed by the legislature.
- 2. The issue raises a legal principle which is very important to Michigan law.
- 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in "B" apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

People v Coloss, 417 Mich 523; 339 NW2d 440 (1983) • People v Snow, 386 Mich 586; 194 NW2d 314 (1972)
People v Rice, 235 Mich App 429; 446; 597 NW2d 843 (1999) • People v Johnson, 261 Mich App 1657; 643 NW2d 76 (2001)
People v Milbourne, 435 Mich 630; 461 NW2d 1 (1992) • People v Steenhouse, 500 Mich 453, 474; 902 NW2d 327 (2017)
People v Massey, 313 Mich App 358; 880 NW2d 812 (2015) • People v Wilcox, 486 Mich 60, 62-63; 781 NW2d 784 (2010)
People v Dixon-Bey, 321 Mich App 490, 525; 909 NW2d 458 (2012) (iv. gtd) 501 Mich 1066; 910 NW2d 303 (2018)
People v Cobbs, 443 Mich 276; 505 NW2d 208 (1993) • People v Smith, 482 Mich 292, 300; 754 NW2d 284 (2008)
People v Payne, 304 Mich App 667, 673; 850 NW2d 601 (2014)
People v Babcock, 469 Mich 247, 253; 1166 NW2d 231 (2003)
People v Francisco, 474 Mich 82, 88-91; 711 NW2d 44 (2006)
People v Lockridge, 498 Mich 358, 870 NW2d 502 (2015)

RELIEF REQUESTED

9. For the above reasons I request that this Court **GRANT** leave to appeal, **APPOINT** a lawyer to represent me, and **GRANT** any other relief it decides I am entitled to receive.

11.4.2019

(Date)

Michael G. Boone #373458

(Print your name and number here.)

Michael G. Boone

(Sign your name here.)

Michigan Reformatory 1342 West Main

(Print your address here.)

Ionia, MI 48854

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

People of the state of Michigan

(Print the name of the opposing party, e.g., "People of the State of Michigan.")

Plaintiff-Appellee,

v
Michael Gerrell Boone

(Print the name you were convicted under on this line.)

Defendant-Appellant.

Supreme Court No. _____
(Leave blank.)

Court of Appeals No. 350454

(From Court of Appeals decision.)

Trial Court No. 2018-248807-FH

(See Court of Appeals brief or Presentence Investigation Report.)

MOTION FOR WAIVER OF FEES AND COSTS

Appellant, pursuant to MCR 7.319(7)(h) and MCL 600.2963, for the reasons stated in the attached affidavit of indigency, requests that this Court: (Check the ones that apply to you.)

GRANT a waiver pursuant to MCR 7.319(7)(h) of all fees required for filing the attached pleadings because the provisions of MCL 600.2963, requiring prisoners to pay filing fees do not apply to appeals from a decision involving a criminal conviction or appeals from a decision of an administrative agency. The statute applies exclusively to prisoners filing civil cases and appeals in civil cases.

GRANT a waiver pursuant to MCR 7.319(7)(h) of all fees required for filing the attached pleadings because the provisions of MCL 600.2963, requiring only indigent prisoners to pay court filing fees violates the equal protection provision of the Michigan Constitution, Art I, Sec 2.

Temporarily waive the initial partial payment of filing fees for the attached pleadings and order the Michigan Department of Correction to collect and pay the money to this Court at a later date in accordance with MCL 600.2963, when the money becomes available in appellant's prison account. If the Court does not allow this, I will be prevented from filing the attached pleading in a timely manner.

Allow an initial partial payment of \$ _____ of the fee for filing the attached pleadings and order the Michigan Department of Correction to collect the remaining money and pay it to this Court at a later date in accordance with MCL 600.2963, as additional money becomes available in my prison account. If the Court does not allow this, I will be prevented from filing the attached pleading in a timely manner.

11-4-2019
(Date)

Michael H. Boone
(Sign your name here)

Michael Boone #373458
(Print your name and number here.)

Michigan Reformatory, 1342 West Main
(Print your address here)

Ironia, MI 48856

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

People of the state of Michigan
(Print the name of the opposing party, e.g. "People of the State of Michigan.")

Supreme Court No. _____
(Leave blank.)

Plaintiff-Appellee,

Court of Appeals No. 350454
(From Court of Appeals decision.)

V
Michael Gerrell Boone
(Print the name you were convicted under on this line.)

Trial Court No. 2018-268807-FH
(See Court of Appeals brief or Presentence Investigation Report.)

Defendant-Appellant.

AFFIDAVIT OF INDIGENCY

1. My name is Michael G. Boone. I am in prison at Michigan Reformatory in Ionia MI.
(Type or print your name here.)
(Name of prison)
(city where prison is located)

My prison number is 373458. My income and assets are: (Check the ones that apply to you.)
(Your prison number.)

My only source of income is from my prison job and I make \$ _____ per day.
 I have no income.
 I have no assets that can be converted to cash.
 I can not pay the filing fees for the attached application.

I ask this Court to waive the filing fee in this matter.

I declare that the statements above are true to the best of my knowledge, information and belief.

11-4-2019
(Date)

Michael G. Boone
(Sign your name here.)

Michael G. Boone
(Print your name here.)

PROOF OF SERVICE

On 11-4-19, 20019, I mailed by U.S. mail one copy of the documents checked below: (Put a check mark by the ones you mailed.)

Affidavit of Indigency and Proof of Service
 Motion to Waive Fees and Costs
 Statement of Prisoner Account (this is not necessary in criminal appeals)
 Pro Per Application for Leave to Appeal with a copy of Court of Appeals Decision
 Court of Appeals Brief
 Supplemental Court of Appeals Brief

TO: Oakland County Prosecutor, 1200 N. Telegraph, at
(Name of county where you were sentenced) Address
Pontiac, MI 48341
(City) Zip Code

I declare that the statements above are true to the best of my knowledge, information and belief.

11-4-2019
(Date)

Michael G. Boone
(Sign your name here.)

Michael G. Boone
(Print your name here.)

Appendix B

Defendants Copy-Admin Order 1983-7

Court of Appeals, State of Michigan

ORDER

People of MI v Michael Gerrell Boone

Kathleen Jansen
Presiding Judge

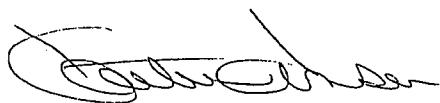
Docket No. 350454

Deborah A. Servitto

LC No. 2018-268807-FH

Colleen A. O'Brien
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.



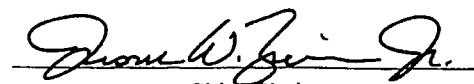
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

OCT 14 2019

Date



Chief Clerk

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

PLAINTIFFS-APPELLEES,

Court of Appeals No. _____

-VS-

MICHAEL GERRELL BOONE,

Lower Court No. 18-268807-FH

DEFENDANT-APPELLANT.

Hon. Michael D. Warren (P-47372)

6th Judicial Circuit

Oakland County

Jessica R. Cooper (P-23242)
Oakland County Prosecuting Attorney
Attorney for Plaintiffs-Appellees
1200 North Telegraph Road
Pontiac, Michigan 48341
Telephone: (248) 858-1000

John W. Ujlaky (P-27660)
Attorney for the Defendant-Appellant
3721 West Michigan Avenue
Suite 304
Lansing, Michigan 48917
Telephone: (517) 323-1939
Facsimile: (517) 323-0904

APPLICATION FOR LEAVE TO APPEAL BY
DEFENDANT-APPELLANT, MICHAEL GERRELL BOONE,

Respectfully Submitted,

John W. Ujlaky (p-27660)
Attorney for the Defendant-Appellant
3721 West Michigan Avenue
Suite 304
Lansing, Michigan 48917
Telephone: (517) 323-1939
Facsimile: (517) 323-0904

BRIEF IN SUPPORT OF THE APPLICATION FOR LEAVE TO APPEAL
BY DEFENDANT-APPELLANT, MICHAEL GERRELL BOONE,

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<i>People v Fortson</i> , 202 Mich App 13, 21; 507 NW2d 763 (1993)	6
~ <i>People v Francisco</i> , 474 Mich 82, 88-91; 711 NW2d 44 (2006)	5
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~ <i>People v Masroor</i> , 313 Mich App 358; 880 NW2d 812 (2015), lv gtd 499 Mich 934; 879 NW2d 252 (2016)	4, 8
~ <i>People v Milbourn</i> , 435 Mich 630; 461 NW2d 1 (1990)	8-9
~ <i>People v Payne</i> , 304 Mich App 667, 673; 850 NW2d 601 (2014)	6
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~ <i>People v Wilcox</i> , 486 Mich 60, 62-63; 781 NW2d 784 (2010)	6

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www.thefreedictionary.com/reasonable/dictionary	7
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JURISDICTIONAL STATEMENT

In this matter, Defendant-Appellant, Michael Gerrell Boone, seeks Leave to Appeal, pursuant to MCR 7.203(B). Jurisdiction over this matter is conferred by MCR 7.205(G)(3)(a).

STATEMENT OF THE QUESTION PRESENTED

I. IS MR. BOONE ENTITLED TO A RE-SENTENCING BECAUSE HIS SENTENCE
WAS NOT REASONABLE AS THE TRIAL COURT ABUSED ITS DISCRETION BY
VIOLATING THE DOCTRINE OF PROPORTIONALITY?

THE TRIAL COURT DID NOT ANSWER THIS SPECIFIC QUESTION.

PLAINTIFFS-APPELLEES DID NOT ANSWER THIS SPECIFIC QUESTION.

DEFENDANT-APPELLANT ANSWERS THIS QUESTION, "YES".

STATEMENT OF FACTS EXPLAINING DELAY

With regard to File No. 2018--268807--FH, the situation is as follows. On December 6, 2018, Mr. Boone pled guilty to a total of four drug offenses, being Delivery/Manufacture of Less the 50 grams of a Controlled Substance (Narcotic/Cocaine), MCL §333.74012A4; Delivery/Manufacture of Less the 50 grams of a Controlled Substance (Narcotic/Cocaine), MCL §333.74012A4; Possession of a Controlled Substance (Methamphetamine/Ecstasy, MCL §333.74032B1; and Possession of Under 25 grams of a Controlled Substance, MCL §74032A5. Mr. Boone acknowledged being a 4th Felony Habitual Offender, MCL §769.13 (Exhibit D).

Mr. Boone also had a *Cobbs* sentencing agreement that his minimum sentence would not exceed the bottom one-half of the recommended minimum sentence range (by adding the bottom of the range to the top of the range and the sum divided by two) (Plea, 6-7, 9). See *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). Mr. Boone was admonished by the trial court that a violation of any of his bond conditions would result in the trial court not being bound by the *Cobbs* sentencing agreement (being free to sentence outside of the *Cobbs* agreement) (Pl, 10).

With regard to File No. 2019--270047--FH, the situation is as follows. On February 28, 2019, Mr. Boone pled guilty to two drug offenses, being Delivery/Manufacture of Less the 50 grams of a Controlled Substance (Narcotic/Cocaine), MCL §333.74012A4; Delivery / Manufacture of Less the 50 grams of a Controlled Substance (Narcotic/Cocaine), MCL §333.74012A4; and 2nd or Subsequent Driving While License Suspended, MCL §257.9041C. Mr. Boone acknowledged being a 4th Felony Habitual Offender, MCL §769.13 (Exhibit I). Lastly, Mr. Boone also had a *Cobbs* sentencing agreement that his minimum sentence would not exceed 30 months (PSI, 1: 19-270047-FH).

Admittedly, with regard to File No. 2019--270047--FH, it was an offense that occurred while Mr. Boone was out on bond in File No. 2018--268807--FH. Since Mr. Boone violated a term of his bond by committing a new crime, in File No. 2019--270047--FH, the *Cobbs* agreement was "vocated" (PSI, 1: 18-268807-FH).

In File No. 2018--268807--FH, Mr. Boone made a timely request for appointed appellate counsel on March 29, 2019 (Exhibit E). In an Order dated April 2, 2019, appellate counsel was appointed (Exhibit F).

Because Mr. Boone pled guilty, he may only appeal by leave (Exhibit D). In File No. 2018-268807--FH, Mr. Boone was sentenced on March 13, 2019 (Sent, 1; Exhibit D; and Exhibit F). Thus, the deadline for a timely filing of an Application for Leave to Appeal is September 19, 2019. The within Application for Leave to Appeal is being filed prior to September 19, 2019. Mr. Boone's Application for Leave to Appeal is timely filed.

STATEMENT OF FACTS

With regard to File No. 2018--268807--FH, the situation is as follows. On December 6, 2018, Mr. Boone pled guilty to a total of four drug offenses, being Delivery/Manufacture of Less the 50 grams of a Controlled Substance (Narcotic/Cocaine), MCL §333.74012A4; Delivery/Manufacture of Less the 50 grams of a Controlled Substance (Narcotic/Cocaine), MCL §333.74012A4; Possession of a Controlled Substance (Methamphetamine/Ecstasy, MCL §333.74032B1; and Possession of Under 25 grams of a Controlled Substance, MCL §74032A5. Mr. Boone acknowledged being a 4th Felony Habitual Offender, MCL §769.13 (Exhibit D).

Mr. Boone also had a *Cobbs* sentencing agreement that his minimum sentence would not exceed the bottom one-half of the recommended minimum sentence range (by adding the bottom of the range to the top of the range and the sum divided by two) (Plea, 6-7, 9). See *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). Mr. Boone was admonished by the trial court that a violation of any of his bond conditions would result in the trial court not being bound by the *Cobbs* sentencing agreement (being free to sentence outside of the *Cobbs* agreement) (Pl, 10).

With regard to File No. 2019--270047--FH, the situation is as follows. On February 28, 2019, Mr. Boone pled guilty to two drug offenses, being Delivery/Manufacture of Less the 50 grams of a Controlled Substance (Narcotic/Cocaine), MCL §333.74012A4; Delivery / Manufacture of Less the 50 grams of a Controlled Substance (Narcotic/Cocaine), MCL §333.74012A4; and 2nd or Subsequent Driving While License Suspended, MCL §257.9041C. Mr. Boone acknowledged being a 4th Felony Habitual Offender, MCL §769.13 (Exhibit I). Lastly, Mr. Boone also had a *Cobbs* sentencing agreement that your minimum sentence would not exceed 30 months (PSI, 1: 19-270047-FH).

Admittedly, with regard to File No. 2019--270047--FH, it was an offense that occurred while Mr. Boone was out on bond in File No. 2018--268807--FH. Since Mr. Boone violated a term of his bond by committing a new crime, in File No. 2019--270047--FH, the *Cobbs* agreement was "vocated" (PSI, 1: 18-268807-FH).

In File No. 18-268807-FH, Mr. Boone's sentencing guidelines were scored as follows. He had thirteen (13) prior felony convictions and eleven (11) prior misdemeanor convictions. He had a Prior Record Variable (PRV) total of 110 points (Level F) and a total of 5 Offense Variable (OV) points (Level I). His recommended minimum sentence range for the Class D, Controlled Substance, Offense in the F-I grid was 10 months to 46 months (Exhibit C).

In File No. 19-270047-FH, Mr. Boone's sentencing guidelines were scored as follows. He had seventeen (17) prior felony convictions and eleven (11) prior misdemeanor convictions. He had a Prior Record Variable (PRV) total of 135 points (Level F) and a total of 5 Offense Variable (OV) points (Level I). His recommended minimum sentence range for the Class D, Controlled Substance, Offense in the F-I grid was 10 months to 46 months (Exhibit H).

Thus, the timing of events is important, to wit:

- With regard to File No. 2018--268807--FH, the offenses were committed on August 29, 2018 (Exhibit B); on December 6, 2018, Mr. Boone pled guilty to a total of four drug offenses (Exhibit D, Plea, 1).
- File No. 2019--270047--FH, the offenses were committed on January 19, 2019 (Exhibit G); on February 28, 2019, Mr. Boone pled guilty to a total of two drug offenses (Exhibit I).
- In File No. 2018--268807--FH, Mr. Boone was sentenced on March 3, 2019, on three counts to 69 months to 50 years in prison; on one count Mr. Boone was sentenced to 69 months to 15 years in prison (Exhibit D, Sent, 14). Judge Warren was aware that: the *Cobbs* sentencing agreement was off the table (Sent, 6, 12); Mr. Boone faced sentencing before Judge Anderson on other unrelated drug convictions (Sent, 6); and Judge Anderson's sentence would mandate a consecutive sentence to Judge Warren's sentence, MCL §768.7b(2)(b) (Sent, 6).
- In File No. 2019--270047--FH, Mr. Boone was sentenced on March 28, 2019, on two counts to 30 months to 50 years in prison; on one count Mr. Boone was sentenced to 72 days with credit for 72 days (Exhibit I). Judge Anderson followed the *Cobbs* sentencing agreement (PSI, 1: 19-270047-FH and Exhibit I).

All sentences in File No. 2018--268807--FH were concurrent to each other. All sentences in File No. 2019--270047--FH were concurrent to each other. However, all sentences in File No. 2019--270047--FH were to be served consecutively to all sentences in 2018--268807--FH (Exhibit D and Exhibit I).

Judge Warren's minimum sentence of 69 months (Exhibit D) was a 23 month upward departure from the top of the recommended minimum sentence of 10 months to 46 months (Exhibit C). With Judge Anderson's (mandatory) consecutive sentences, Mr. Boone has an effective minimum sentence of 99 months. Mr. Boone contends that re-sentencing is required because Judge Warren's sentence was unreasonable and disproportionate. However, Judge Anderson's sentences were valid beyond any question.

Combining all sentences, Mr. Boone's over-all sentence was really 99 months to 50 years. Mr. Boone submits that Judge Warren's sentence in File No. 2018--268807--FH, was longer and more severe than the appropriate sentencing guidelines range. The sentence(s) was not reasonable as it failed to be a proportionate departure sentence. While the trial court gave reasons for its sentence, it did not expressly justify the sentence imposed.

ARGUMENT

I. MR. BOONE IS ENTITLED TO A RE-SENTENCING BECAUSE HIS SENTENCE WAS NOT REASONABLE AS THE TRIAL COURT ABUSED ITS DISCRETION BY VIOLATING THE DOCTRINE OF PROPORTIONALITY

PRESERVATION OF ISSUE:

The trial court imposed a minimum sentence that exceeded the, now, advisory sentencing guidelines, *People v Lockridge*, 498 Mich 358, 870 NW2d 502 (2015); as scored by the trial court (Exhibit C and Exhibit D). MCL §769.34(7) provides for appellate review of a sentence that is longer or more severe than the appropriate sentencing guidelines range. While *Lockridge*, *supra*, did sever MCL §769.34(2) and MCL §769.34(3), it did not sever MCL §769.34(7). Also see *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008) and *People v Kimble*, 470 Mich 305, 310; 684 NW2d 669 (2004).

People v Harper, 479 Mich 599, 637; 739 NW2d 523 (2007), stated (Emphasis added):

"a defendant may appeal an upward departure on the basis of an alleged violation of this statutory right by arguing that the sentencing judge did not state on the record a legally sufficient substantial and compelling reason to depart."

However, *Harper*, *supra*, must be slightly revised by *Lockridge*, *supra*, by substituting "reasonable" for "sufficient substantial and compelling" (Emphasis added):

"A sentence that departs from the applicable guidelines range will be reviewed by an appellate court for reasonableness. *Booker*, 543 US at 261. Resentencing will be required when a sentence is determined to be unreasonable. . . . Sentencing courts must, however, continue to consult the applicable guidelines range and take it into account when imposing a sentence. Further, sentencing courts must justify the sentence imposed in order to facilitate appellate review. *People v Coles*, 417 Mich 523, 549; 339 NW2d 440 (1983), overruled in part on other grounds by *People v Milbourn*, 435 Mich 630, 644; 461 NW2d 1 (1990)."

The preservation matter was specifically addressed in *People v Masroor*, 313 Mich App 358; 880 NW2d 812 (2015), lv gtd 499 Mich 934; 879 NW2d 252 (2016)

"Although defendants receiving departure sentences cannot demonstrate prejudicial error arising from the calculation of their guidelines, *Lockridge* clearly instructs us to review departure sentences for 'reasonableness[.],' *id.* at 2, 29, and specifically directs sentencing courts to 'justify the sentence imposed in order to facilitate appellate review.' *Id.* at 29."

STANDARD OF REVIEW:

This Court applies de novo review to questions of statutory interpretation and constitutional law, *People v Babcock*, 469 Mich 247, 253; 666 NW2d 231 (2003) and *Lockridge, supra*: "Resentencing will be required when a sentence is determined to be unreasonable."

Sentencing courts must, however, continue to consult the applicable guidelines range and take it into account when imposing a sentence. Further, sentencing courts must justify the sentence imposed in order to facilitate appellate review."

Also see *People v Masroor*, 313 Mich App 358; 880 NW2d 812 (2015), lv gtd 499 Mich 934; 879 NW2d 252 (2016).

As stated in *People v Lawhorn*, 320 Mich App 194; 907 NW2d 832 (2017):

"[T]he proper interpretation and application of the legislative sentencing guidelines . . . are legal questions that this Court reviews de novo.' *People v Morson*, 471 Mich 248, 255; 685 NW2d 203 (2004). 'Under the sentencing guidelines, the circuit court's factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence. Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo.' *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013)."

DISCUSSION:

Mr. Boone contends that he has a due process right to be sentenced on the basis of accurate information, which necessarily includes an accurate assessment of the applicable law and guidelines calculation for a particular case, MCL §769.34(10) and *People v Francisco*, 474 Mich 82, 88-91; 711 NW2d 44 (2006).

Here, the trial court sentenced Mr. Boone to concurrent prison terms of 69 months to 50 years, which was a 23 month upward departure from the top of the recommended minimum sentence of 10 months to 46 months (Exhibit C). With Judge Anderson's (mandatory) consecutive sentences Mr. Boone has an effective minimum sentence of 99 months (Exhibit I).

Although sentencing courts have greater discretion, they still must recognize when they are departing and explain why the departure is reasonable, *People v Lockridge*, 498 Mich 358, 870 NW2d 502 (2015). This “includes an explanation of why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been[.]” *People v Dixon-Bey*, 321 Mich App 490, 525; 909 NW 2d 458 (2017), leave to appeal pending, 501 Mich 1066; 910 NW 2d 303 (2018) (quoting *Smith, supra*, 311).

A departure rationale is required for any sentence exceeding the guidelines range, *People v Wilcox*, 486 Mich 60, 62-63; 781 NW2d 784 (2010) and *People v Payne*, 304 Mich App 667, 673; 850 NW2d 601 (2014). Trial courts are required to justify their sentencing rationale on the record, *People v Fortson*, 202 Mich App 13, 21; 507 NW2d 763 (1993). The trial court did not really do so in this case. However, for whatever justifying was done on the record, it is up to this Court to determine whether those reasons were sufficient to justify the sentence that was imposed. And, whether such a sentence was either unreasonable or disproportionate.

As noted in *Lockridge, supra*, there are two prongs that must be determined in an upwardly departed minimum sentence: whether the minimum upward departure sentence is reasonable; and whether the trial court sufficiently justified the minimum upward departure sentence. As stated in *Masroor, supra*:

“Although defendants receiving departure sentences cannot demonstrate prejudicial error arising from the calculation of their guidelines, *Lockridge* clearly instructs us to review departure sentences for ‘reasonableness[,]’ *id.* at 2, 29, and specifically directs sentencing courts to ‘justify the sentence imposed in order to facilitate appellate review.’ *Id.* at 29.”

As explained in *Lawhorn, supra* (Citations omitted):

: “Because defendant was sentenced after the opinion was issued in *Lockridge*, and the trial court was aware of the new sentencing standards set forth in that case, defendant’s departure sentence must be reviewed for reasonableness under the ‘principle of proportionality’ test adopted in *People v Milbourn*.”

In *People v Steanhause*, 500 Mich 453, 474; 902 NW 2d 327 (2017), the Court held 'that a sentence that fulfills the principle of proportionality under *Milbourn*, and its progeny, constitutes a reasonable sentence under *Lockridge*.' In *People v Masroor*, this Court summarized the reasonableness standard of review to be applied to departure sentences:

'In a nutshell, *Milbourn*'s 'principle of proportionality' requires a sentence 'to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.' *Milbourn* instructs that departure sentences 'are appropriate where the guidelines do not adequately account for important factors legitimately considered at sentencing' so that the sentence range calculated under the guidelines' is disproportionate, in either direction, to the seriousness of the crime.' The extent of the departure must also satisfy the principle of proportionality.

'In *Steanhouse*, this Court also noted several factors that courts have considered in applying the proportionality standard, including '(1) the seriousness of the offense; (2) factors that were inadequately considered by the guidelines; and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation.'"

Here, what little justification there was on the record can be seen in the sentencing transcript (Sent, 13-15):

"It also -- well, I don't care what they recommend, . . . I will note that he has denied having a substance abuse issue. He's been in jail, on probation, and had several prison terms, was obviously on the bond when the additional offense happened.

. . . I find that it is in the best interests of justice to sentence the Defendant as follows. . . . He's already been to prison. It's -- the -- the -- the serial violation of the law needs to stop.

"For counts one and two, controlled substance, delivery, manufacturer cocaine, heroin, or another narcotic less than 50 grams, habitual fourth, 69 months to 50 years in the Michigan Department of Corrections, with jail credit of 61 days.

"The Court finds that the upward deviation of 50 percent of the top of the guideline range is warranted in light of his PRVs being at 110. As the People have noted, it's off the chart -- substantially off the charts, and that he engaged in additional similar criminal behavior while on bond to this Court. . . . You're going to be in prison a long time."

Mr. Boone submits that it was not reasonable for the trial court to exceed maximum minimum advisory guidelines by 50% (from 46 months to 69 months) or to elevate the minimum sentence from the originally anticipated 30 month minimum as provided in the *Cobbs* sentencing agreement.

The trial court's departure from the applicable guidelines range was "unreasonable". The upward departed sentence utterly fails to be in accord or comply with either the concept or definition of reasonableness: www.thefreedictionary.com/reasonable/dictionary (Emphasis added):

- "1. Capable of reasoning; **rational**: a reasonable person.
- "2. Governed by or being in accordance with **reason or sound thinking**: a reasonable solution to the problem.
- "3. Being **within the bounds of common sense**: arrive home at a reasonable hour.
- "4. **Not excessive or extreme; fair**: reasonable prices.

"Suitable; **just**; proper; ordinary; **fair**; usual.

"The term reasonable is a generic and relative one and applies to that which is appropriate for a particular situation."

Mr. Boone submits that the trial court's departure from the applicable guidelines range was "unreasonable". As a consequence thereof, Mr. Boone is rightfully entitled to a resentencing before a different judge.

Mr. Boone contends that his sentence was not a proportionate sentence as defined by *Masroor, supra*, and *Steanhouse, supra*, which revived the reasonableness standard of the former *Milbourn* proportionality standard, *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

He is entitled to a resentencing because his sentence is disproportionate. Michigan employs the principle of proportionality in sentencing, requiring "sentences imposed by the trial court to be **proportionate to the seriousness of the circumstances surrounding the offense and the offender.**" *Steanhouse, supra*, 474, quoting *Milbourn, supra*, 636.

A sentencing range produced by the Michigan Sentencing Guidelines "is the best 'barometer' of where on the continuum from the least to the most threatening circumstances a given case falls. *Milbourn, supra*, 656. A court may select a sentence outside the reading offered by the statutory "barometer," but such a sentence should be justified by factors not reflected in that recommendation such as aspects of the case not taken into account by, given insufficient weight by the Michigan Sentencing Guidelines, *Milbourn, supra*, 658.

The goals of sentencing include: (a) reformation of the offender; (b) protection of society; (c) disciplining the offender; and (d) the deterrence of others from committing like offenses. *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972); *People v Rice (On Remand)*, 235 Mich App 429, 446; 597 NW2d 843 (1999); and *People v Solmonson*, 261 Mich App 657 (fn 4.); 683 NW2d 761 (2004).

In an effort to comply with the sentencing goals in this case, the trial judge did not mention "reformation": "He's already been to prison. It's -- the -- the -- the serial violation of the law needs to stop." (Sent, 14).

The trial judge failed to address the "protection of society" aspect of the sentence. The trial judge had these sentiments: "The Defendant's guideline - - guideline range in this case is 10 to 46 months" (Sent, 12); "I don't care what they recommend." (Sent, 13); "I find that it is in the best interests of justice to sentence the Defendant as follows." (Sent, 14); and "The Court finds that the upward deviation of 50 percent of the top of the guideline range is warranted in light of his PRVs being at 110." (Sent, 15).

Based upon the forgoing, Mr. Boone submits that the trial judge was only concerned with the "discipline" aspect of the sentencing goals. The trial court failed to address why the sentences imposed were appropriate or how the sentence would serve as a deterrence (Sent, 12-15).

Steanhause, supra, provided additional insight the meaning of proportionate: "proportionate to the seriousness of the circumstances surrounding the offense and the offender." Here, the trial judge never explained how "the upward deviation of 50 percent of the top of the guideline range" was proportionate to the seriousness of the circumstances surrounding the offense. The trial judge only focused the offender (Sent, 12-15).

Mr. Boone submits that the trial court's departure from the applicable guidelines range was disproportionate to the seriousness of the circumstances surrounding the offense and the offender. As a consequence thereof, Mr. Boone is rightfully entitled to a resentencing before a different judge.

The trial court had the obligation of individualizing Mr. Boone's sentences with the proper criteria for determining the appropriate sentence, see *People v Coles*, 417 Mich 523; 339 NW2d 440 (1983) and *Lockridge, supra*. Mr. Boone asserts that the trial court failed to properly justify the upward departure minimum sentence.

Here, the trial judge placed on the record his reasons for the upward departure, however, merely because reasons are stated on the record does not automatically equate with reasonableness and proportionality (Sent, 14-15) (Emphasis added):

"I find that it is in the best interests of justice to sentence the Defendant as follows. . . . He's already been to prison. It's - - the - - the - - the serial violation of the law needs to stop. For counts one and two, controlled substance, delivery, manufacturer cocaine, heroin, or another narcotic less than 50 grams, habitual fourth, 69 months to 50 years in the Michigan Department of Corrections, with jail credit of 61 days.

* * *

"The Court finds that the upward deviation of 50 percent of the top of the guideline range is warranted in light of his PRVs being at 110. As the People have noted, it's off the chart - - substantially off the charts, and that he engaged in additional similar criminal behavior while on bond to this Court."

Mr. Boone submits that it was not reasonable for the trial court to exceed the advisory guidelines by an upward deviation of 50 percent (23 months) above the top of the guidelines. (Sent, 15). Judge Warren's minimum sentence of 69 months (Exhibit D) was a 23 month upward departure from the top of the recommended minimum sentence of 10 months to 46 months (Exhibit C). With Judge Anderson's (mandatory) consecutive sentences Mr. Boone has an effective minimum sentence of 99 months. Mr. Boone contends that re-sentencing is required because Judge Warren's sentence was unreasonable and disproportionate.

Based on the foregoing, Mr Boone is not only entitled to a res-sentencing, but he is entitled to a re-sentencing before a different judge. Mr. Boone had a due process right to be sentenced by a judge free from even the appearance of bias. Judge Warren was rather apparently not an unbiased and impartial judge. Therefore, re-sentencing before a different judge is required.

RELIEF SOUGHT

WHEREFORE, Defendant-Appellant, Michael Gerrell Boone, requests this Honorable Court, lieu of granting him Leave to Appeal, vacate his sentence and remand the matter to the trial court for a re-sentencing before a different judge; or, in the alternative, Mr. Boone prays this Honorable Court grant him Leave to Appeal; and, lastly, Mr. Boone prays this Honorable Court grant unto him any other or further relief to which he may be found to be entitled in the interest of justice, equity, and good conscience.

Respectfully submitted,



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Dated: August 31, 2019

Appendix C

Document: People v. Dixon-Bey, 321 Mich. App. 490

People v. Dixon-Bey, 321 Mich. App. 490

[Copy Citation](#)

Court of Appeals of Michigan

September 26, 2017, Decided

No. 331499

Reporter

321 Mich. App. 490 * | 909 N.W.2d 458 ** | 2017 Mich. App. LEXIS 1512 ***

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v DAWN MARIE DIXON-BEY, Defendant-Appellant.

Subsequent History: Later proceeding at People v. Dixon-Bey, 501 Mich. 1066, 910 N.W.2d 303, 2018 Mich. LEXIS 858 (May 4, 2018)

Motion granted by People v. Dixon-Bey, 912 N.W.2d 179, 2018 Mich. LEXIS 1119 (Mich., June 11, 2018)

Motion granted by People v. Dixon-Bey, 915 N.W.2d 733, 2018 Mich. LEXIS 1591 (Mich., Aug. 15, 2018)

Motion granted by People v. Dixon-Bey, 918 N.W.2d 535, 2018 Mich. LEXIS 2044 (Mich., Oct. 26, 2018)

Motion granted by People v. Dixon-Bey, 920 N.W.2d 141, 2018 Mich. LEXIS 2455 (Mich., Dec. 5, 2018)

Leave to appeal denied by People v. Dixon-Bey, 2019 Mich. LEXIS 1362 (Mich., July 29, 2019)

Prior History: [***1] Jackson Circuit Court. LC No. 15-004596-FC.

Core Terms

sentence, guidelines, stab, proportionality, self-defense, murder, scoring, departure, offender, training, kill, wounds, knife, dollars, weapon, twice, premeditated, homicide, autopsy, scene, daughter, prejudicial, recommended, skill, second-degree, disclosure, advisory, deviates, violence, chest

Case Summary

Overview

HOLDINGS: [1]-Even though the trial court erred by qualifying a detective as an expert about the demeanor of those who kill in self-defense, because his expertise was in the area of interpreting evidence at homicide investigations, not in psychology or some other behavior science, the error was not outcome determinative as there was other evidence undermining defendant's self-defense claim; [2]-The trial court did not err by admitting evidence of defendant's attempts to prevent the victim's daughter from having custody of her half-sister because it was relevant under MRE 401, as it

Criminal Law & Procedure > Counsel ▾ >  Effective Assistance of Counsel ▾ > Trials ▾

HN11  **Effective Assistance of Counsel, Trials**

An attorney's failure to advance a meritorious argument or raise a futile objection does not constitute ineffective assistance of counsel.  More like this Headnote

Shepardize - Narrow by this Headnote

Criminal Law & Procedure > ... > Standards of Review ▾ > Abuse of Discretion ▾ > Evidence ▾

Evidence > Relevance ▾ > Exclusion of Relevant Evidence ▾ >  Confusion, Prejudice & Waste of Time ▾

Evidence > Relevance ▾ >  Relevant Evidence ▾

HN12  **Abuse of Discretion, Evidence**

A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. Additionally, evidence is admissible only if it is relevant, meaning that it has a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. MRE 401; MRE 402. However, even relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. MRE 403.  More like this Headnote

Shepardize - Narrow by this Headnote

Evidence > Admissibility ▾ > Conduct Evidence ▾ > Prior Acts, Crimes & Wrongs ▾

HN13  **Conduct Evidence, Prior Acts, Crimes & Wrongs**

MRE 404(a) generally prohibits the admission of character evidence for character purposes. Despite this general prohibition, character evidence may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act. MRE 404(b)(1). At its essence, MRE 404(b) is a rule of inclusion, allowing relevant other acts evidence as long as it is not being admitted solely to demonstrate criminal propensity.  More like this Headnote

Shepardize - Narrow by this Headnote

Criminal Law & Procedure > Defenses ▾ >  Self-Defense ▾

Evidence > Admissibility ▾ > Conduct Evidence ▾ > Prior Acts, Crimes & Wrongs ▾

HN14  **Defenses, Self-Defense**

A defendant's prior acts of violence are highly relevant as to whether a defendant was acting in self-defense.  More like this Headnote

Shepardize - Narrow by this Headnote

Criminal Law & Procedure > Sentencing ▾ > Sentencing Guidelines ▾ > Departures From Guidelines ▾

Criminal Law & Procedure > Sentencing ▾ > Appeals ▾ > Proportionality & Reasonableness Review ▾

HN15  **Sentencing Guidelines, Departures From Guidelines**

A sentence that departs from the applicable guidelines range will be reviewed by an appellate court for reasonableness. The standard of review to be applied by appellate courts reviewing a sentence for reasonableness on appeal is abuse of discretion. In Steamhouse, the Michigan Supreme Court clarified that the relevant question for appellate courts reviewing a sentence for reasonableness is whether the trial court abused its discretion by violating the principle of proportionality. The principle of proportionality is one in which a judge helps to fulfill the overall legislative scheme of criminal punishment by taking care to assure that the sentences imposed across the discretionary range are proportionate to the seriousness of the matters that come before the court for sentencing. In making this assessment, the judge, of course, must take into account the nature of the offense and the background of the offender. Under this principle, the key test is whether the sentence is proportionate to the seriousness of the matter, not whether it departs from or adheres to the guidelines recommended range.  More like this Headnote

Shepardize - Narrow by this Headnote

Criminal Law & Procedure > Sentencing ▾ > Proportionality ▾

Criminal Law & Procedure > Sentencing ▾ > Sentencing Guidelines ▾

HN16‡ Sentencing, Proportionality

When the Minnesota Supreme Court adopted the principle of proportionality in *Milbourn*, it noted that it was doing so, in part, to effectively combat unjustified disparity in sentencing. As such, one of the purposes of the proportionality requirement is to minimize idiosyncrasies. The *Milbourn* Court pointed to the sentencing guidelines as an aid to accomplish the purposes of proportionality, noting that they were a useful tool in carrying out the legislative scheme of properly grading the seriousness and harmfulness of a given crime and given offender within the legislatively authorized punishments. In *Smith*, the Supreme Court reiterated that the sentencing guidelines provide objective factual guideposts that can assist sentencing courts in ensuring that the offenders with similar offense and offender characteristics receive substantially similar sentences.  More like this Headnote

Shepardize - Narrow by this Headnote

Criminal Law & Procedure > Sentencing ▾ > Sentencing Guidelines ▾ > Departures From Guidelines ▾

Criminal Law & Procedure > Sentencing ▾ > Proportionality ▾

Criminal Law & Procedure > Sentencing ▾ > Appeals ▾ > Proportionality & Reasonableness Review ▾

HN17‡ Sentencing Guidelines, Departures From Guidelines

The Minnesota Supreme Court has noted that the Legislature had incorporated the principle of proportionality into the legislative sentencing guidelines. The guidelines remain a highly relevant consideration in a trial court's exercise of sentencing discretion that trial courts must consult and take into account when sentencing. Because the guidelines embody the principle of proportionality and trial courts must consult them when sentencing, it follows that they continue to serve as a "useful tool" or "guideposts" for effectively combating disparity in sentencing. Therefore, relevant factors for determining whether a departure sentence is more proportionate than a sentence within the guidelines range continue to include (1) whether the guidelines accurately reflect the seriousness of the crime, (2) factors not considered by the guidelines, and (3) factors considered by the guidelines but given inadequate weight. When making this determination and sentencing a defendant, a trial court must justify the sentence imposed in order to facilitate appellate review, which includes an explanation of why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been.  More like this Headnote

Shepardize - Narrow by this Headnote

Criminal Law & Procedure > ... > Sentencing Guidelines ▾ > Departures From Guidelines ▾ > Upward Departures ▾

HN18‡ Departures From Guidelines, Upward Departures

Generally, offense variable (OV) 6 (offender's intent to kill or injure another individual), MCL 777.36, can be scored to reflect an offender's intent and does not warrant an upward departure. However, pursuant to MCL 777.36(2)(a), a sentencing court must score OV 6 consistent with a jury verdict unless the judge has information that was not presented to the jury. As a result, a sentencing court may be constrained under the guidelines from scoring OV 6 as high as it otherwise would have.  More like this Headnote

Shepardize - Narrow by this Headnote

Criminal Law & Procedure > ... > Murder ▾ > Definitions ▾ > Deliberation & Premeditation ▾

Criminal Law & Procedure > ... > Murder ▾ >  First-Degree Murder ▾ > Elements ▾

Criminal Law & Procedure > ... > Murder ▾ >  Second-Degree Murder ▾ > Elements ▾

HN19‡ Definitions, Deliberation & Premeditation

Although a jury may find premeditation when convicting an offender of first-degree murder, it is not required to find premeditation for second-degree murder.  More like this Headnote

Shepardize - Narrow by this Headnote

Criminal Law & Procedure > ... > Murder ▾ > Definitions ▾ > Deliberation & Premeditation ▾

Criminal Law & Procedure > ... > Murder >  Second-Degree Murder > Penalties

HN20  **Definitions, Deliberation & Premeditation**

The Legislature expressly gave trial courts an opportunity to find a premeditated intent for crimes to which such an intent does not necessarily attach. Absent the legislatively prescribed condition necessary to trigger that ability, the Court of Appeals of Minnesota is highly skeptical of a trial court's decision to sentence a defendant convicted of second-degree murder as though the murder were premeditated.  More like this Headnote

Shepardize - Narrow by this Headnote

Criminal Law & Procedure > Sentencing > Proportionality

Criminal Law & Procedure > Sentencing > Appeals > Proportionality & Reasonableness Review

Criminal Law & Procedure > Sentencing > Sentencing Guidelines

HN21  **Sentencing, Proportionality**

Reliance solely on a trial court's familiarity with the facts of a case and its experience in sentencing cannot effectively combat unjustified disparity in sentencing because it construes sentencing review so narrowly as to avoid dealing with disparity altogether. The Milbourn Court expressly recognized that a proportionality determination becomes considerably more difficult where the Legislature has set no minimum or has prescribed a maximum of a lengthy term of years or life. To deal with this difficulty, the Milbourn Court directed courts to consider the sentencing guidelines because they offered the best "barometer" of where on the continuum from the least to the most threatening circumstances a given case falls. Following Lockridge and Steanhause, trial courts are still required to consult the now advisory guidelines and take them into account when sentencing.  More like this Headnote

Shepardize - Narrow by this Headnote

Criminal Law & Procedure > Sentencing > Proportionality

Criminal Law & Procedure > Sentencing > Sentencing Guidelines

HN22  **Sentencing, Proportionality**

Stanhause directs that proportionality in Michigan be based upon the seriousness of the offense and not a deviation from the guidelines, but the Court of Appeals of Minnesota disagrees that Steanhause encourages appellate courts to determine proportionality in a void without consideration of the sentencing guidelines. Steanhause generally reaffirmed the Minnesota Supreme Court's prior jurisprudence regarding the principle of proportionality, implicitly condoning consideration of the sentencing guidelines in a proportionality determination, and it only disavowed its earlier opinions to the extent that they indicated in dicta that there was a presumption of disproportionality when a sentence departed from the guidelines. More explicitly, the Steanhause Court quoted Gall for the proposition that appellate courts may take the degree of variance into account and consider the extent of a deviation from the Guidelines. Accordingly, the court reads Steanhause as directing appellate courts to use the sentencing guidelines as an aid when doing so assists in determining whether a sentence is proportionate.  More like this Headnote

Shepardize - Narrow by this Headnote

Counsel: For PEOPLE OF MI V DAWN MARIE DIXON-BEY, Plaintiff-Appellee: JERROLD SCHROtenBOER

For DAWN MARIE DIXON-BEY, Defendant-Appellant: GARY STRAUSS.

Judges: Before: O'BRIEN, P.J., and HOEKSTRA and BOONSTRA, JJ. Boonstra, J. (concurring in part and dissenting in part).

Opinion by: Colleen A. O'Brien

Opinion

[**461]  O'BRIEN, P.J.

Defendant, Dawn Marie Dixon-Bey, was arrested after admittedly stabbing her boyfriend, Gregory Stack (the victim), to death in their home on  February 14, 2015. At first, she claimed that the victim must have been stabbed during an

District of Columbia
In The Supreme Court of the United
States

Michael Gerrill Boone
Petitioner

v.
People of the State
of Michigan
Respondant

Proof of Service

I Michael Boone swear that I mailed an
amended petition in response to the Courts letter to
correct the question presented in my petition and that I
mailed the amended question presented to the States
Attorney General Office the same date with a copy of
this proof of service, all mailed 8-20-2020

Affirmed,
Michael M. Boone