

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

UNPUBLISHED

April 12, 1996

No.183738

LC No.94-006212

RONDELL LAMONT BEAMON,

Defendant-Appellant.

Before: Doctoroff, C.J., and McDonald and J.B.Sullivan* J.J.

MEMORANDUM.

Following a bench trial in Detroit Recorder's Court, defendant was convicted of voluntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to five to fifteen years' imprisonment for voluntary manslaughter and two consecutive years' imprisonment for felony-firearm. He filed this appeal as of right. We affirm.

Defendant's only claim on appeal is that his sentence, which was at the top end of the guidelines of one to five years, violates the principle of proportionality. *People v Milbourn*, 435 Mich 460; 461 NW2d 1 (1990). However, defendant has presented nothing to rebut the presumption of proportionality. *People v McCray*, 210 Mich App 9, 13; 533 NW2d 359 (1995). Further, this Court has held that the proportionality of consecutive sentences is not to be determined on a cumulative basis. *People v Hardy*, 212 Mich App 318, 320; ___ NW2d ___ (1995).

Defendant's reliance on *People v McKernan*, 185 Mich App 780; 462 NW2d 843 (1990), is misplaced. In *McKernan*, this Court remanded for resentencing because the trial court improperly considered the sixty-four-year-old defendant's age in assessing the risk of recidivism. In contrast, the trial court in the instant case noted that there was evidence to justify a conviction for

*Retired Court of Appeals Judge, sitting on the Court of Appeals by assignment pursuant to Administrative Rule 1995-6.

second degree murder because defendant, armed with a weapon, injected himself into an affray where there was no evidence that anyone else was armed.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Gary R. McDonald

/s/ Joseph B. Sullivan