

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 157186

LC No. 91-112501-FC

HARVEY LAVAL THOMPSON,

Defendant-Appellant.

Before: MacKenzie, P.J., and Saad and C.F. Youngblood*, JJ.

PER CURIAM.

Defendant, age sixteen, was originally charged with one count of first-degree murder, MCL 750.316; MSA 28.548, and six counts of assault with intent to murder, MCL 750.83; MSA 28.278. Pursuant to a plea agreement, he pleaded guilty to one count of second-degree murder, MCL 750.317; MSA 28.549, and six counts of assault with intent to murder, MCL 750.83; MSA 28.278. Defendant was subsequently sentenced as an adult to twenty-five to forty years' imprisonment for each conviction. He appeals by application for delayed appeal granted. We affirm.

The charges in this case arose out of a gang-related drive-by shooting. It appears from the record that defendant and other individuals decided it was necessary to do some shooting to settle a dispute, drove to the east side of Pontiac, and opened fire in the direction of a house where there were several adults and children in the home's front yard area. A 19-year-old woman was shot and killed as a result. Defendant contends that the trial court abused its discretion in sentencing him as an adult. The claim is without merit. As noted by the prosecution, defendant had a criminal record and was an admitted drug dealer who was on probation at the time of this offense. As evidenced by this crime, his previous treatment within the juvenile system had been less than effective. Furthermore, this was an extremely serious offense, involving a plan to shoot guns as an act of gang retaliation, a death, and shots fired in the direction of several other individuals. Defendant lacked family support, and showed no

*Circuit judge, sitting on the Court of Appeals by assignment.

remorse for the consequences of his actions. Officials representing the probation department and the Probate Court agreed that the services offered by the juvenile justice system were insufficient to rehabilitate defendant. They also agreed that defendant would pose a danger to the community if he were released at age twenty-one. Under these circumstances, the trial court did not abuse its discretion in determining that defendant should be sentenced as an adult. See MCL 769.1(3); MSA 28.1072(3); MCR 6.931(E)(3), *People v Miller*, 199 Mich App 609; 503 NW2d 89 (1993). Compare *People v Brown*, 205 Mich App 503; 517 NW2d 806 (1994).

We also reject defendant's claim that his sentence was disproportionate. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Defendant's minimum sentence was within the guidelines' recommended range of 120 to 300 months and hence was presumptively proportionate. *People v Broden*, 428 Mich 343, 354; 408 NW2d 789 (1987). Defendant has not presented mitigating factors related to his criminal history or the circumstances of the offense that are of sufficient significance to overcome that presumption of proportionality. We find no abuse of discretion in the sentence imposed. *Milbourn, supra*.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Henry William Saad
/s/ Carole F. Youngblood