

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 189284

LC No. 94-039808-FH

JOSHUA GABRIEL BAKER,

Defendant-Appellant.

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

MEMORANDUM.

Defendant was originally charged with assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during commission of a felony, MCL 750.227b; MSA 28.424(2). Pursuant to a plea agreement, defendant pleaded guilty to a reduced charge of felonious assault, MCL 750.82; MSA 28.277, and was sentenced to two to four years' imprisonment. Defendant appeals as of right and we affirm.

Defendant's sole claim on appeal is that his sentence, which exceeded the guidelines' recommended minimum sentence range of zero to twelve months, was not proportionate. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The claim is without merit. The guidelines did not take into account the fact that defendant had the benefit of pleading to a lesser offense, as well as the dismissal of the felony-firearm charge. *People v Duprey*, 186 Mich App 313; 463 NW2d 240 (1990). Further, the circumstances of this offense - defendant shot his companion in the face during an argument, causing serious injuries and necessitating \$40,000 in medical care - justified the sentence imposed. Defendant's sentence was neither excessive nor an abuse of discretion. *Milbourn, supra*.

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

Affirmed.

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