

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL WARREN WHITE,

Defendant-Appellant.

UNPUBLISHED

May 3, 1996

No. 186132

LC No. 94-002697-FH

Before: Taylor, P.J., and Fitzgerald and P. D. Houk,* JJ.

MEMORANDUM.

Pursuant to a plea agreement, defendant pleaded guilty to armed robbery,¹ MCL 750.529; MSA 28.797, assault with intent to commit murder, MCL 750.83; MSA 28.278, and habitual offender, second offense, MCL 769.10; MSA 28.1082. In return for defendant's plea, the prosecutor dismissed a charge of conspiracy to commit armed robbery and/or assault with intent to murder. Defendant appeals as of right the enhanced sentences of fifteen to thirty-five years. We affirm defendant's sentences and remand for correction of the judgment of sentence.

Defendant argues that his sentences were disproportionate. We disagree.

Defendant's sentences were within the sentencing guidelines' range of ten to twenty-five years and thus were presumptively proportionate. *People v Fisher*, 442 Mich 560, 582; 503 NW2d 50 (1993). Defendant has not presented this Court with unusual circumstances sufficient to rebut the presumptive proportionality of the challenged sentences. *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992). Indeed, we believe defendant's assault sentence is quite lenient in that defendant viciously struck a sales clerk in the head with a baseball bat and hit the victim in the head several more times as she lay on the floor in a pool of blood. This brutal, senseless act was without provocation and caused permanent hearing loss and psychological injuries to the victim. The trial court did not abuse its discretion in sentencing defendant. *People v Cervantes*, 448 Mich 620, 626-627;

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

532 NW2d 831 (1995). Defendant's sentences are proportionate to the seriousness of the circumstances surrounding the offenses and the offender. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990); *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995).

Finally, we reject defendant's argument that his sentences are disproportionate because his codefendants received lesser sentences. *In re Jenkins*, 438 Mich 364, 376; 475 NW2d 279 (1991). In any event, none of the codefendants hit the victim in the head with a baseball bat or were convicted of assault with intent to commit murder.

Affirmed, but remanded for correction of the judgment of sentence.

/s/ Clifford W. Taylor

/s/ E. Thomas Fitzgerald

/s/ Peter D. Houk

¹ The judgment of sentence incorrectly states that defendant was convicted of assault with intent to rob while armed. The information charged defendant with armed robbery and armed robbery was the crime identified at the plea and sentencing hearings. Accordingly, the judgment of sentence must be corrected on remand. MCR 6.435(A).