

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON C. DILLOW,

Defendant-Appellant.

UNPUBLISHED

May 7, 1996

No. 180304

LC No. 94-132945

Before: Murphy, P.J., and Reilly and C.W. Simon, Jr.,* JJ.

PER CURIAM.

Defendant pleaded guilty to armed robbery, MCL 750.529; MSA 28.797. The trial court sentenced him as an adult to imprisonment for three to twenty years. Defendant appeals as of right, and we affirm.

Defendant first argues that he received ineffective assistance of counsel. In *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994), our Supreme Court adopted the federal standard for determining whether a defendant has been denied effective assistance of counsel as set forth in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). To find that a defendant's right to effective assistance of counsel was so undermined that it justifies reversal of an otherwise valid conviction, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that the representation so prejudiced the defendant as to deprive him of a fair trial. *Pickens, supra*, 302-303. After reviewing the record, we conclude that defendant has failed to overcome the presumption that he received effective assistance of counsel and has failed to show that he was prejudiced by any alleged deficiencies in defense counsel's assistance. Accordingly, we reject defendant's contention that he received ineffective assistance of counsel.

Defendant next argues that he must be resentenced because the trial court mistakenly believed that defendant was eligible for the boot camp program and did not understand that defendant's eligibility

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

for the boot camp program was controlled by statute rather than Department of Corrections guidelines. MCL 791.234a(2)(h)(i); MSA 28.2304(1)(2)(h)(i) specifically excludes prisoners who are serving a sentence for armed robbery from eligibility for the boot camp program. We agree with defendant that the trial court was mistaken in its belief that defendant's eligibility for the program was controlled by Department of Corrections guidelines rather than by statute. However, even after being informed that defendant may not be eligible for the boot camp program, the trial court reaffirmed defendant's three-year-minimum sentence. Defendant's minimum sentence is within the guidelines range of 18 to 60 months and is therefore presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant is not entitled to be resentenced.

Defendant further argues that the trial court abused its discretion in sentencing him as an adult. At the time of the offense, defendant was almost sixteen years and eleven months old. The trial court conducted a juvenile sentencing hearing as required by MCR 6.931(A) and MCL 769.1(3); MSA 28.1072(3) and decided to sentence defendant as an adult. In deciding whether to sentence a minor as an adult, the trial court must consider the factors listed in MCR 6.931(E)(3)(a)-(f) and MCL 769.1(3)(a)-(f); MSA 28.1072(3)(a)-(f). We review a trial court's findings of fact at a juvenile sentencing hearing for clear error. MCR 2.613(C); *People v Lyons (On Remand)*, 203 Mich App 465, 468; 513 NW2d 170 (1994). The ultimate decision whether to sentence the minor as a juvenile or as an adult is reviewed for an abuse of discretion. *Lyons, supra*, 468. We have carefully reviewed the reports submitted by the Department of Social Services and the probation department and conclude that the trial court's findings of fact were not clearly erroneous and that the trial court's decision to sentence defendant as an adult was an not abuse of discretion.

Defendant finally argues that his plea was involuntary and not intelligent because the trial court failed to comply with MCR 6.302(B)(2) because it did not advise defendant of a mandatory minimum sentence for armed robbery. A defendant may not raise on appeal any claim that a plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court. MCR 6.311(C). Defendant did not move to withdraw his plea in the trial court and therefore has not preserved this issue for review. In any event, we note that defendant's argument was rejected in *People v Blythe*, 417 Mich 430; 339 NW2d 399 (1983).

Affirmed.

/s/ William B. Murphy
/s/ Maureen Pulte Reilly
/s/ Charles W. Simon, Jr.