

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID FRANK E. VALLES,

Defendant-Appellant.

UNPUBLISHED

May 7, 1996

No. 183486

LC No. 94-051024-FC

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

PER CURIAM.

Defendant pleaded guilty to conspiracy to commit armed robbery, MCL 750.157a; MSA 28.354(1), 750.529; MSA 28.797, in exchange for the prosecution's agreement to drop a second charge of armed robbery, MCL 750.529; MSA 28.797, and not to charge defendant with felony murder. Defendant was subsequently sentenced to ten to twenty years, and now appeals as of right, asserting that his sentence violated the principle of proportionality. We affirm.

FACTS

Defendant and four of his friends agreed to rob the victim, a known marijuana dealer, of his "weed" and his cash. On January 19, 1994, defendant drove the group, in his own car, to the victim's home, where all five left the car and went toward the victim's home. Defendant knew that Antonio Dunn had a gun, which had been supplied by Kenyetta Mays. The plan was to use the gun to intimidate the victim into laying down, so that Antonio and Jason Withey could take the cash and marijuana. Kenyetta walked up to the house with the group, as did defendant and Daniel Pipkin, who were to act as "lookouts." When the victim protested, Antonio shot him; Jason or Antonio grabbed the victim's wallet and a cookie tin full of marijuana. When defendant saw Antonio shoot the victim, defendant turned and ran back to the car; defendant then drove all five men away from the scene. Defendant shared in the distribution of the stolen cash and marijuana. The victim died of a single gunshot wound to his heart.

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

Defendant was charged with armed robbery and with conspiracy to commit armed robbery. As part of his plea agreement, he was not charged with felony murder, and he agreed to testify against his codefendants. The leader of the group, Antonio Dunn, was sentenced to fifteen to thirty years for second-degree murder. Although the record does not indicate the *charges* lodged against the other “lookout,” Daniel Pipkin, Pipkin pleaded guilty to conspiracy to commit armed robbery and was sentenced to ten to twenty years.

At the time of sentencing, defendant was twenty-one years old, had an eighth grade education, and had a two-year old daughter. He had been employed at Corsair Engineering in Flint on a full-time basis, earning \$5.20 per hour, until his right hand was injured in June, 1994 (five months after the robbery). After June, 1994, defendant began to receive worker’s compensation benefits. Defendant has no juvenile record. At the time of sentencing, he was on probation from an April 14, 1993, conviction for aggravated assault. There were also two outstanding warrants against defendant for OUIL (06/27/91 and 06/30/94) and a warrant for driving without an operator’s license (10/04/94).

ANALYSIS

Defendant asserts that his ten to twenty-year sentence is not proportionate to the circumstances of this offense and offender. We note initially that conspiracy to commit armed robbery is not a guidelines offense. We therefore turn to the conspiracy statute itself for sentencing guidance. With certain exceptions not relevant here, the conspiracy statute makes clear that:

. . . if commission of the offense prohibited by law is punishable by imprisonment for 1 year or more, the person convicted under this section shall be punished by a penalty equal to that which could be imposed if he had been convicted of committing the crime he conspired to commit and in the discretion of the court an additional penalty of a fine of \$10,000.00 may be imposed. MCL 750.157a, MSA 28.354(1). (Emphasis added.)

The crime of armed robbery is punishable by imprisonment for life or for any term of years, pursuant to MCL 750.529; MSA 28.797. Therefore, we believe that, when reviewing the proportionality of a sentence for conspiracy to commit armed robbery, the term of the guidelines sentence for the crime of armed robbery is an appropriate point to begin consideration. See *People v Marji*, 180 Mich App 525, 536; 447 NW2d 853 (1989) (no error for court to sentence defendant to the same mandatory minimum for *conspiracy* to deliver cocaine, as would be appropriate for the offense of delivery of cocaine).

At sentencing here, the trial judge noted that, if the guidelines had been scored for the offense of armed robbery in the circumstances of this offense, the recommended sentencing range would have been sixty to one-hundred eighty months (five to fifteen years). After noting this range, the sentencing judge identified two additional factors which influenced the sentence: the fact that defendant was among a group who planned to invade the victim’s *home*, and the fact that the victim died as a result of their actions.

After very careful review of the record, we conclude that defendant's sentence, while severe, is not disproportionate to the circumstances of this offense or this offender.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Henry William Saad

/s/ Carole F. Youngblood