

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT MCKINNEY,

Defendant-Appellant.

UNPUBLISHED

May 21, 1996

No. 180446

LC No. 94-002812

Before: Young, P.J., Holbrook, Ernst,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to consecutive terms of imprisonment of twelve to twenty years and two years, respectively. Defendant appeals as of right. We affirm.

Defendant drove his car onto the victim's driveway as the victim was entering the side of his house. Defendant began shooting at the victim, and the victim was wounded in the leg and chest. The victim managed to contact police before receiving treatment for his injuries.

Defendant argues that the trial court improperly admitted evidence of prior acts of aggression by defendant against the victim. Defendant claims that he was prejudiced by the prosecution's failure to give pretrial notice of its intent to introduce this evidence as required by MRE 404(b). However, defendant's objection to this evidence at trial was based on relevancy rather than lack of notice. Having failed to raise the lack of notice objection at trial, defendant has waived this issue on appeal. *People v Considine*, 196 Mich App 160, 162; 492 NW2d 465 (1992).

Defendant next argues that the findings of the trial court were clearly erroneous. The victim testified that he recognized that defendant was the one shooting him from the car. This evidence, in

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

conjunction with defendant's previous acts of aggression towards the victim, support the trial court's finding that defendant shot the victim with an intent to murder. We find no error. See *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

Defendant next argues that his sentence is disproportionate.. Defendant was sentenced within the guidelines, and thus, his sentence is presumptively valid. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Further, this Court finds that defendant has not presented unusual circumstances that warrant finding that the trial court abused its discretion. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Donald E. Holbrook, Jr.

/s/ J. Richard Ernst