

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICARDO DEON STAMPS,

Defendant-Appellant.

---

UNPUBLISHED

June 21, 1996

No. 182075

LC No. 94-003542

Before: Cavanagh, P. J. and Hood and J. J. McDonald\*, JJ.

PER CURIAM.

Defendant was convicted in a bench trial of second-degree murder, MCL 750.317; MSA 28.549, assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2).<sup>1</sup> Defendant was sentenced to concurrent terms of twenty to thirty years for the second-degree murder conviction and eighty months to ten years for the assault with intent to do great bodily harm conviction, to be served consecutively to the mandatory two years for the felony firearm conviction.<sup>2</sup> He appeals as of right. We affirm.

Defendant first argues that the trial court failed to make sufficient findings of fact as to: 1) defendant's theory of self-defense, and 2) each element of the crime. We disagree.

We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Kang*, 209 Mich App 540, 550; 531 NW2d 806 (1995). Moreover, we review the sufficiency of the trial court's factual findings in the context of the evidence and the specific legal and factual issues raised by the parties. *People v Simon*, 189 Mich App 565, 568-569; 473 NW2d 785 (1991). Factual findings are sufficient if it appears that the trial court was aware of the issues and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). The trial court need not make specific findings of fact regarding each element of the crime. *Id.* A careful review of the record indicates that the trial court considered defendant's claim of self-defense and made specific findings of fact regarding the charge of second-degree murder. Therefore, we find no merit to defendant's claim.

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

Defendant next argues that the trial court erred by imposing a minimum sentence in excess of the statutory maximum for his assault with intent to do great bodily harm. We disagree. This issue raises a question of law, which we review de novo. *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995).

We have held that any sentence which provides for a minimum exceeding two-thirds of the statutory maximum is improper as failing to comply with the indeterminate sentence act. *People v Tanner*, 387 Mich 683, 690; 199 NW2d 202 (1972). The appropriate remedy for a violation of the *Tanner* rule is for the court to set aside the unlawful excess of the sentence. *People v Thomas*, 447 Mich 390, 393; 523 NW2d 215 (1994). In the present case, the trial court initially imposed a minimum term in excess of the ten-year statutory maximum which violated the *Tanner* rule. However, the court later modified its sentence to comply with the *Tanner* rule. See *Thomas, supra* at 392. Since the trial court had jurisdiction to modify the invalid portion of defendant's original sentence, *People v Kaczorowski*, 190 Mich App 165, 174; 475 NW2d 861 (1991), we affirm defendant's amended sentence of eighty months to ten years.

Defendant next argues that the trial court improperly scored offense variables (OV) 3, intent to kill or injure, and 13, psychological injury to victim, with respect to his second-degree murder conviction. We disagree.

Appellate review of a trial court's scoring of sentencing guidelines is limited. *People v Harris*, 190 Mich App 652, 663; 476 NW2d 767 (1991). A sentencing judge has discretion in determining the number of points to be scored, provided that there is evidence on the record to support a particular score. *Id.* This Court will affirm a scoring decision for which there is any supporting evidence. *People v Watkins*, 209 Mich App 1, 5; 530 NW2d 111 (1995).

Defendant maintains that he was victimized by the decedent. The trial court, however, found that defendant fired two shots into the back of the decedent, who had turned to run away from defendant, and that the decedent was unarmed at the time of the shooting. We conclude that these circumstances not only fail to demonstrate victimization of defendant, which would be scored at 10 points, but they support a finding of intent to kill, the intent necessary for the sentencing court to score OV 3 at 25 points.

With respect to OV 13, the sentencing guidelines provide that 5 points should be scored if the "victim's family" suffered "serious psychological injury . . . necessitating professional treatment." Since the decedent's mother was "devastated" by the incident and required psychiatric treatment "to help her deal with this tragedy," we affirm the trial court's decision to score 5 points for OV 13.

Lastly, defendant argues that the sentence imposed for his second-degree murder conviction is disproportionate to the offense and the offender. We disagree.

Appellate review of sentencing decisions is limited to determining whether an abuse of discretion has occurred. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). A sentencing

court has abused its discretion when a sentence is not proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.* A sentence within the minimum recommended guidelines range is presumptively proportionate. *People v Wilson*, 196 Mich App 604, 610; 493 NW2d 471 (1992). This presumption of proportionality may be overcome upon a showing of “unusual circumstances.” *Milbourn, supra* at 661.

Here, the guidelines recommended a minimum sentence of from 120 to 300 months. Therefore, defendant’s sentence of 240 to 360 months is presumptively proportionate. A review of the record indicates that defendant failed to present any unusual circumstances to overcome this presumption. Accordingly, we find no abuse of discretion.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Harold Hood

/s/ John J. McDonald

---

<sup>1</sup> Defendant had originally been charged with assault with intent to murder, MCL 750.83; MSA 28.278.

<sup>2</sup> Defendant’s felony firearm sentence is to be served concurrently with the felony firearm sentence imposed in Lower Court No. 94-003541 (COA No. 182074). The murder and assault sentences are to be served concurrently to the other sentences imposed in Lower Court No. 94-003541 (COA No. 182074) and consecutively to the sentence remaining in Lower Court No. 93-012363.