

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MALACHI NATHANIEL GELPKE,

Defendant-Appellant.

UNPUBLISHED

June 28, 1996

No. 185196

LC No. 94-009592-FH

Before: Smolenski, P.J., and Holbrook, Jr. and F.D. Brouillette,* JJ.

PER CURIAM.

Defendant was convicted by a jury of felonious assault, MCL 750.82; MSA 18.277. He was sentenced to twenty-four to forty-eight months' imprisonment, to be served consecutively to the sentence he was serving at the time of this crime. He appeals as of right. We affirm.

Defendant and the victim were both prison inmates. Defendant attacked the victim with an improvised weapon at a prison softball game. Defendant claimed that the victim was targeting him for progressively aggressive actions, including physical and sexual aggression. He stated that he attacked the victim to protect himself from the victim and from gaining a reputation as a person who could be easily victimized. Defendant stated that this sort of action was necessary to survive in prison.

Defendant argues that there was insufficient evidence of lack of self-defense to support his conviction. We disagree. Conviction for a claimed self-defense action requires disproving that the defendant "honestly and reasonably believe[d] that his life [was] in imminent danger or that there [was] a threat of serious bodily harm." *People v Fortson*, 202 Mich App 13, 19-20; 507 NW2d 763 (1993). The victim testified that he never threatened defendant. Further, defendant told two corrections officers that he had been quietly waiting for his chance to get even with the victim for gutting his television, that this was his chance and that he wished he could have hurt the victim more. Viewing this evidence in a light most favorable to the prosecution, there was

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

sufficient evidence of lack of self-defense. *People v Hurst*, 205 Mich App 635, 640; 517 NW2d 858 (1994).

Affirmed.

/s/ Michael J. Smolenski
/s/ Donald E. Holbrook, Jr.
/s/ Francis D. Brouillette