

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAURA FAULK,

Defendant-Appellant.

UNPUBLISHED
October 22, 1996

No. 179546
LC No. 94000261

Before: Saad, P.J., and Corrigan and R.A. Benson,* JJ.

PER CURIAM.

Defendant appeals by right her bench trial conviction for second-degree murder, MCL 750.317; MSA 28.549, on original charges of first-degree felony murder, MCL 750.316; MSA 28.548, and arson of a dwelling house, MCL 750.72; MSA 28.267. The court sentenced defendant to a term of imprisonment of twenty to sixty years. We affirm in part, reverse in part, and remand for resentencing.

Defendant argues that the trial court erred in allowing the prosecutor's late endorsement of an expert witness, who testified that defendant did not suffer from diminished capacity. We disagree. First, because the record reflects good cause for the late endorsement, the trial court did not abuse its discretion in allowing it. Although the prosecutor apparently filed a notice of rebuttal of insanity and diminished capacity, and the court apparently entered an order for testing for both purposes, the Recorder's Court clinic examiner inadvertently examined defendant only for insanity purposes. The court did not err in permitting further examination after the omission was discovered. *People v Kulick*, 209 Mich App 258, 265; 530 NW2d 163 (1995); *People v Canter*, 197 Mich App 550, 563; 496 NW2d 336 (1992). Moreover, the trial court found that defendant suffered from diminished capacity and, therefore, lacked the capacity to form the specific intent necessary for arson and thus acquitted her of first-degree felony murder. Because the court was persuaded by defendant's diminished capacity defense, any error in permitting the late endorsement of the prosecution expert was harmless.

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

Next, defendant argues that she is entitled to resentencing because the trial court stated that it was sentencing defendant with the intention of sending a message to the community, and considered defendant's parole eligibility in sentencing her to a term of years instead of life imprisonment. The court certainly did not err in articulating its desire to send a message to the community. Because defendant's sentence was within the guidelines' range, and because sending a message to the community is a proper objective of sentencing, the trial court did not abuse its discretion in rendering its decision on this point. *People v Odendahl*, 200 Mich App 539, 540-541; 505 NW2d 16 (1993); *People v Poppa*, 193 Mich App 184, 190-191; 483 NW2d 667 (1992); *People v Reddish*, 181 Mich App 625, 631; 450 NW2d 16 (1989).

Although the court was laboring under an apparent misconception of the law, we do not remand for resentencing. The trial court erroneously believed that a sentence to a long term of years would make defendant eligible for parole later than a life sentence. *People v Lino (After Remand)*, 213 Mich App 89, 94-99; 539 NW2d 545 (1995). Unlike *Lino*, the court sentenced defendant precisely as it intended, to a lengthy term of years. The error was thus harmless. The court did not sentence defendant to a term of life imprisonment. The sentence imposed was proportionate to the nature of the offense and the circumstances of the offender.

Finally, defendant argues that the trial court's findings of fact were insufficient because the court failed to consider evidence of defendant's diminished capacity. We disagree. The trial court was aware of defendant's diminished capacity defense and of her request for the lesser offense of involuntary manslaughter. The court found the defense persuasive, and concluded that defendant was guilty of second-degree murder instead of first-degree felony murder. *People v Kerry Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995); *In re Forfeiture of Bail Bond (People v Kang)*, 209 Mich App 540, 550; 531 NW2d 806 (1995). The trial court properly declined to convict defendant of involuntary manslaughter. Defendant's acts of setting fire to the stairs leading up to the victim's flat, after first locking him inside, and then going for a walk, would naturally tend to cause death or great bodily harm, and could not support an involuntary manslaughter conviction. See *People v Booker (After Remand)*, 208 Mich App 163, 170; 527 NW2d 42 (1994).

Affirmed.

/s/ Henry William Saad
/s/ Maura D. Corrigan
/s/ Robert A. Benson