

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY MEEKS,

Defendant-Appellant.

UNPUBLISHED
November 1, 1996

No. 182590
LC No. 94-000467

Before: Wahls, P.J., and Cavanagh and J.F. Kowalski,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted on one count of second-degree murder, MCL 750.317; MSA 28.549, one count of assault with intent to murder, MCL 750.83; MSA 28.278, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent terms of thirty to sixty years' imprisonment for the murder and assault convictions, consecutive to the mandatory two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first alleges that, when answering a question posed by the jury, the trial court improperly referred to the murder weapon as defendant's gun. As a result of the trial court's comment, defendant argues that he was deprived of his rights to a fair trial and an impartial jury. We disagree. Defendant failed to object to the trial court's conduct at trial. In the absence of objection, this Court may review the matter if manifest injustice results from the failure to review. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 336 (1995). Upon review of the lower court record, we find that the trial court accurately told the jury that there was testimony regarding defendant's possession of a gun. Notably, the trial court did not state that defendant was guilty, or that defendant shot the victims, or even that defendant actually had a gun. Rather, the trial court merely stated that there was testimony that defendant had a handgun or pistol. Therefore, the trial court was not improperly finding facts and invading the province of the jury. Because trial court's conduct did not deny defendant a fair and impartial trial, no manifest injustice will result from our failure to review this issue.

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

Next, defendant argues that he was denied a fair and impartial trial due to prosecutorial misconduct during closing arguments. However, defendant failed to object to the prosecutor's alleged misconduct, and we find that a proper instruction would have cured any resultant prejudice. *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994), cert den ___ US ___; 115 S Ct 923; 140 L Ed 2d 802 (1995).

Defendant also argues that the trial court's instruction of the legal standard of reasonable doubt was erroneous. However, defendant failed to object to the allegedly improper jury instruction at trial. Failure to object to jury instructions waives error unless relief is necessary to avoid manifest injustice. MCL 768.29; MSA 28.1052; *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995). In this case, because the lower court's instructions mirrored those contained in CJI2d 3.2, they were sufficient to inform the jury of the concept of reasonable doubt, and, as such, were properly given. See *People v Sammons*, 191 Mich App 351, 372; 478 NW2d 901 (1991), lv den 439 Mich 938, cert den 505 US 1213 (1992). Accordingly, we find that no manifest injustice will arise from our failure to review this issue.

Defendant next argues that he was denied the effective assistance of counsel at trial because his counsel failed to object to (1) the reasonable doubt jury instruction; (2) the prosecutor's comments at closing argument; and (3) the trial court's comment that a particular gun belonged to defendant. In addition, defendant argues that trial counsel failed to request a jury instruction as to defendant's defense theory, e.g., mere presence at the crime scene. Claims of ineffective assistance of counsel based on defense counsel's failure to object or make motions which could not have affected defendant's chances for acquittal are without merit. *People v Lyles*, 148 Mich App 583, 596; 385 NW2d 676 (1986). Moreover, the mere presence instruction, which would have told the jury that defendant had to be more than merely present to be convicted of assault and murder, was both unnecessary and superfluous in light of the identification instruction read to the jury. We believe that the jury instructions, when read as a whole, adequately conveyed the concept that defendant had to be responsible for the crimes charged in order to be convicted of those crimes. See *People v Bender*, 124 Mich App 571, 575; 335 NW2d 85 (1983). Thus, counsel's failure to request an instruction on defendant's "mere presence" theory did not constitute ineffective assistance of counsel.

Finally, defendant argues that his thirty- to sixty-year sentences are disproportionate. A sentence within the guidelines range is presumed to be proportionate. *People v Albert*, 207 Mich App 73, 75; 523 NW2d 825 (1994). However, a sentence may still violate the principle of proportionality "in unusual circumstances." *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990). In this case, the thirty-year minimum sentences imposed for defendant's assault and murder convictions fell within the sentencing guidelines range of fifteen to thirty years or life, and we find no unusual circumstances that render it disproportionate. This Court has held that a defendant's lack of criminal history is not an usual circumstance which could overcome the presumption of proportionality. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). In addition, defendant's remorse and familial support are not unusual circumstances which would warrant defendant receiving a lower sentence. See *People v Houston*, 448 Mich 312, 326; 532 NW2d 508 (1995). Finally, according to the presentence information report (PSIR), defendant has been convicted of several prior felonies and

three juvenile offenses. Because the information presented in the PSIR supports the conclusion that defendant is violent and a continued threat to society, defendant's thirty-year minimum sentences were warranted.

Affirmed.

/s/ Myron H. Wahls
/s/ Mark J. Cavanagh
/s/ John F. Kowalski