

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ISAAC GREENWADE,

Defendant-Appellant.

UNPUBLISHED

December 3, 1996

No. 187841

LC No. 94-010976

Before: Holbrook, Jr., P.J., and White and S.J. Latreille,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of assault with intent to commit 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). Defendant was sentenced to serve sixteen to thirty years in prison for the assault conviction, and two years in prison for the felony-firearm conviction, with the former sentence to run consecutively to the latter. We affirm.

Defendant first argues that the prosecution failed to present sufficient evidence to establish his specific intent to kill, a necessary element of assault with intent to commit murder. We disagree. When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). The elements of the crime of assault with intent to commit murder are: 1) an assault, 2) with an actual intent to kill, 3) which, if successful, would make the killing murder. *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993). The intent to kill may be proven by inference from any facts in evidence. *Id.*

Here, defendant refused to stop when ordered to do so by the officer and his partner and ran into a nearby house. The officer saw defendant turn toward him with a gun. The officer dove off the porch of the home to avoid being shot. The officer's partner saw defendant shoot directly at the officer.

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

Both the officer and his partner heard two gunshots, and later found a warm gun inside the house matching the description provided by the officer. The gun smelled of gunpowder and contained three live rounds. Accordingly, viewing the evidence in a light most favorable to the prosecution, we find that sufficient evidence was presented to establish defendant's requisite intent to kill the police officer.

Defendant next argues that that his sixteen-year minimum sentence, although within the sentencing guidelines as calculated for assault with intent to commit murder, is excessive and violates the principle of proportionality established by *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1994). We disagree. This Court reviews the legality of a trial court's sentencing of a criminal defendant for an abuse of discretion. *People v Houston*, 448 Mich 312, 319; 532 NW2d 508 (1995). A trial court abuses its discretion when it imposes a sentence that is not proportional to the seriousness of the matter. *Id.* Sentences within the range recommended by the guidelines are presumptively valid. *People v Tyler*, 188 Mich App 83, 85; 468 NW2d 537 (1991).

Here, defendant's minimum sentence was within the guidelines range of eight to twenty years, and is therefore presumptively proportionate. *Tyler, supra*. Defendant cites no unusual circumstances to suggest that the sentence was disproportionate. Defendant argues that the sentence is disproportionately harsh in light of the fact that he was only twenty-five years old at the time of sentencing. Defendant's age, however, is not a controlling factor. *People v Piotrowski*, 211 Mich App 527, 532-533; 536 NW2d 293 (1995). Given that defendant was on probation at the time of the assault, and that the offense constituted his third felony conviction, we conclude that the trial court did abuse its discretion.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Helene N. White

/s/ Stanley J. Latreille