

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE MUNSON,

Defendant-Appellant.

UNPUBLISHED

December 20, 1996

No. 187808

LC No. 93-007426

Before: Jansen, P.J., and Saad and M. D. Schwartz,* JJ.

PER CURIAM.

A jury found defendant guilty but mentally ill on two counts of assault with intent to commit criminal sexual conduct, MCL 750.520G(1); MSA 28.788(7) (sexual penetration), and two counts of armed robbery, MCL 750.529; MSA 28.797. Defendant was sentenced within the guidelines to twenty-five to sixty years in prison on the two armed robbery convictions, and he now asserts on appeal that this sentence violates the principle of proportionality. We affirm.

Defendant asserts that his sentence of twenty-five to sixty years (within the guidelines) violates the principle of proportionality because: (1) he had only minor non-violent felony convictions, (2) psychologists and psychiatrists testified at trial that he suffered from schizophrenia and paranoia, (3) he is borderline retarded, with an IQ of 72, and (4) he was sexually abused as a child and is delusional regarding sexual matters.

Because this sentence was within the guidelines, it is presumptively proportionate. *People v Bailey (On Remand)*, 218 Mich App 645, 647; 554 NW2d 391 (1996). Furthermore, we have reviewed the record and conclude that defendant has failed to overcome the presumption of proportionality. Defendant laid in waiting before robbing and attempting to rape a thirty-year old woman and her sixteen year old niece. The thirty-year old complainant was able to escape while defendant was inserting his penis into her vagina, by grabbing his knife and stabbing him repeatedly. Both women then ran outside totally naked, and attempted to stop a passerby to help them. The sentencing judge stated that rehabilitation was no longer an option for defendant, in light of the

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

seriousness of the crime, and the fact that defendant had been receiving psychiatric help since childhood. Defendant, who was only twenty-three years old, also had numerous previous convictions: receipt of stolen property under \$100, two counts of possession with intent to deliver a controlled substance, giving false information to police and possession of a controlled substance. We find no violation of proportionality in the sentence imposed.

Affirmed.

/s/ Kathleen Jansen

/s/ Henry William Saad

/s/ Michael D. Schwartz