

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LULA MAE McDONALD,

Defendant-Appellant.

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UNPUBLISHED

January 7, 1997

No. 191093

Muskegon Circuit Court

LC No. 95-37958-FH

Before: McDonald, P.J., and Murphy and M. F. Sapala\*, JJ.

PER CURIAM.

Defendant appeals a bench trial conviction of assault with intent to do great bodily harm less than murder, MCL 750.841; MSA 28.279<sup>1</sup> and a sentence of five to ten years' imprisonment. On appeal defendant claims the court erred when it denied defendant's written and oral motions for a competency examination of the defendant and further claims the court abused its discretion in sentencing the defendant to five to ten years in prison.

After a careful review of the record, we conclude the court's finding of facts that the defendant was competent to stand trial were not clearly erroneous and it did not abuse its discretion in denying the motion. *People v Harris*, 158 Mich App 100; 460 NW2d 239 (1990), *People v Nelson Johnson*, 58 Mich App 473; 228 NW2d 429 (1975) lv den 394 Mich 784 (1975).

Although defendant had a history of being treated for mental illness there was no evidence presented to the court indicating the defendant did not understand the charges against her or that she was unable to assist counsel in presenting a defense. In fact the defendant's testimony at the motion for competency hearing; the trial and sentencing were lucid, coherent and logical and she responded to the court's and counsels questions appropriately.

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\* Recorder's Court judge, sitting on the Court of Appeals by assignment.

Finally, we find the sentence of the court was not an abuse of discretion because it was proportionate to the defendant's criminal history and the circumstances surrounding the offense. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The sentence was within the sentencing guidelines and no mitigating circumstances were presented to the court justifying a lesser sentence. This offense was defendant's third felony conviction.

Affirmed.

/s/ Gary R. McDonald

/s/ William B. Murphy

/s/ Michael F. Sapala

<sup>1</sup> Although defendant was also charged with habitual offender third offense, MCL 769.11; MSA 28.1083, there is nothing in the record indicating the defendant consented or objected to being sentenced as a habitual offender nor did the court make such a finding at trial and the judgment of sentence did not indicate defendant was being sentenced as a habitual offender. Therefore we did not consider defendant convicted and sentenced for this offense.