

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KERRY F. NICHOLS,

Defendant-Appellant.

UNPUBLISHED

January 10, 1997

No. 181183

Recorder's Court

LC No. 94-001583

Before: Griffin, P.J., and T.G. Kavanagh* and D.B. Leiber,** JJ.

PER CURIAM.

Defendant was convicted following a jury trial of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to two years' imprisonment for the felony-firearm conviction, six to ten years' imprisonment for the assault with intent to do great bodily harm conviction, and thirty-two to forty-eight months' imprisonment for the felonious assault conviction. Defendant challenges his sentence for assault with intent to do great bodily harm as disproportionate. We affirm.

A sentence imposed must be proportionate to the seriousness of circumstances surrounding the offenses and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). A sentence is presumed to be proportionate if it falls within the sentencing guidelines' recommendation. *People v Mooney*, 216 Mich App 367, 379; 549 NW2d 65 (1996). Because his sentence was within the guidelines' range, defendant must show unusual mitigating circumstances to overcome this presumption. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994); *People v Eberhardt*, 205 Mich App 587, 590; 518 NW2d 511 (1994).

* Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

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

Defendant points to three circumstances which he argues mitigate the seriousness of his offense. First, he argues that there was “bad blood” between him and the victim, that the victim had recently hit him over the head with a bottle, and that he feared the victim was about to draw a gun when he shot the victim. Second, defendant suggests that substance abuse may have played a part in his commission of the offense. Finally, defendant argues that his criminal history is “insignificant” for a person his age.

Defendant has failed to provide factual support for these alleged circumstances. The record contains few facts to support defendant’s self-defense claim. As to defendant’s substance abuse claim, defendant cites only a portion of the PSIR which stated that “defendant was first introduced to crack cocaine in 1988. He was abusing the stimulant on a daily basis for approximately one year until April, 1993.” However, the instant offenses occurred in November 1993. Defendant’s prior felony conviction makes his claim of an “insignificant” prior record equally questionable. Further, lack of a prior record is not an unusual circumstance. *People v Piotrowski*, 211 Mich App 527, 532-533; 536 NW2d 293 (1995); *Daniel, supra* at 54. Defendant has thus failed to show unusual mitigating circumstances to overcome the presumption of proportionality.

Affirmed.

/s/ Richard Allen Griffin
/s/ Thomas G. Kavanagh
/s/ Dennis B. Leiber