

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY ALAN HAGSTROM,

Defendant-Appellant.

UNPUBLISHED

January 21, 1997

No. 193848

Leelanau County

LC No. 95-000814-FH

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Before: Neff, P.J., and Smolenski and D. A. Roberson,\* JJ.

MEMORANDUM.

Pursuant to a plea agreement, defendant pleaded guilty to second degree home invasion, MCL 750.110a; MSA 28.305(a). In exchange, the prosecutor agreed to dismiss a second count of second degree home invasion and an allegation that defendant was an habitual offender (fourth), MCL 769.12; MSA 28.1084. Defendant was sentenced to five to fifteen years' imprisonment. He now appeals as of right, challenging the proportionality of his sentence. We affirm.

A sentence must be proportional to both the seriousness of the crime and the defendant's prior record. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). A sentence is presumptively proportional where it falls within the sentencing guidelines. *People v Cotton*, 209 Mich App 82, 85; 530 NW2d 495 (1995). In the present case, the guidelines minimum sentence range for home invasion was 60 to 120 months. Defendant has offered nothing to overcome the presumption that his five-year minimum sentence, at the low end of this range, is proportional. *Id.*

We further note that defendant has a lengthy criminal record which includes three felony convictions, and that defendant was on probation when he committed the instant offense. Despite prior lenient treatment, defendant has refused to conform his actions to the law. The five-year minimum sentence imposed by the trial court does not violate the doctrine of proportionality.

Affirmed.

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

/s/ Janet T. Neff

/s/ Michael R. Smolenski

/s/ Dalton A. Roberson