

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEWAYNE CARL BIRCH, JR.,

Defendant-Appellant.

UNPUBLISHED

March 25, 1997

No. 187776

Ingham Circuit Court

LC No. 95-068470-FC

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to second-degree murder, MCL 750.317; MSA 28.549, as an aider and abettor, and was sentenced to fifteen to twenty-five years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court properly considered the acts of the principal in sentencing defendant because, as an aider and abettor, he was subject to the same punishment as the principal. MCL 767.39; MSA 28.979; *People v Hoaglin*, 262 Mich 162; 247 NW 141 (1933); *People v Spicer*, 216 Mich App 270; 548 NW2d 245 (1996). The trial court also properly reviewed the injuries and death which occurred as a result of this crime since those uncontested facts were contained in the presentence investigation report. *People v Lee*, 391 Mich 618; 218 NW2d 655 (1974).

Next, defendant incorrectly argues that his sentence is outside the sentencing guidelines' range and is disproportionate. Defendant misapprehends the nature of the guidelines' range. In fact, defendant's entire sentence is contained within the guidelines' range. Defendant has presented no unusual circumstances to rebut the presumption that his sentence is proportional. *People v Piotrowski*,

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

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

211 Mich App 527; 536 NW2d 293 (1995); *People v Sharp*, 192 Mich App 501; 481 NW2d 773 (1992). Defendant's sentence does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar