

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEVRO DEMOND ADKINS,

Defendant-Appellant.

UNPUBLISHED

April 8, 1997

No. 172976

Saginaw Circuit Court

LC No. 93-8321-FH

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AMAD RASHAD ADKINS,

Defendant-Appellant.

No. 181162

Saginaw Circuit Court

LC No. 93-8320-FC

---

Before: Holbrook, Jr., P.J., and White and S.J. Latreille\*, JJ.

PER CURIAM.

In these consolidated cases, defendants appeal their convictions and sentences following a joint jury trial. Defendant Devro Adkins, who was seventeen years old at the time of the instant offense, was convicted of receiving and concealing a stolen firearm, MCL 750.535b; MSA 28.803(2). Defendant Amad Adkins, Devro's brother, was sixteen at the time of the instant offenses and seventeen at sentencing. Amad was convicted of assault with intent to murder, MCL 750.83; MSA 28.278, felony firearm, MCL 750.227b(a); MSA 28.424(2)(a), carrying a concealed weapon, MCL 750.227; MSA 28.424, one count of receiving and concealing a stolen firearm and one count of receiving and concealing stolen ammunition, MCL 750.535b; MSA 28.803(2), and receiving and concealing stolen

---

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

property under \$100, MCL 750.535; MSA 28.803. He was sentenced as an adult to twenty-five to fifty years' imprisonment. We affirm defendant Devro Adkins' conviction and sentence. With regard to defendant Amad Adkins, we affirm in part, reverse in part and order his judgment of sentence amended.

## I

### A

Defendant Devro Adkins argues that insufficient evidence was presented at trial to support his conviction of receiving and concealing a stolen firearm because the prosecution presented no direct evidence proving that he knew the gun he was carrying was stolen. However, a defendant's knowledge that property is stolen may be demonstrated by circumstantial evidence. *People v Clark*, 154 Mich App 772, 775; 397 NW2d 864 (1986). Defendant was in possession of the firearm only a few hours after it had been stolen. He was seen running across a parking lot, away from the scene of a shooting, with the gun concealed in a shirt. When he saw the police, he threw the gun to the ground. Moreover, other articles reported stolen along with the gun were discovered at defendant's residence. Viewing the testimony in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.

### B

Because there are no sentencing guidelines applicable to the subject offense, we reject defendant Devro Adkins' argument that the trial court abused its discretion when it deviated from the sentencing guidelines. Although the trial court referred to the guidelines at the sentencing hearing,<sup>1</sup> the SIR was erroneously completed for the offense of receiving and concealing stolen property, MCL 750.535; MSA 28.803, which has a five-year statutory maximum, and not the conviction offense of receiving and concealing a stolen firearm, MCL 750.535b; MSA 28.803(2), which has a ten-year statutory maximum and for which there are no guidelines.<sup>2</sup>

In its appellate brief, the prosecution recognizes the guidelines are inapplicable, and states that "it would appear that there was some confusion at sentencing between the crime Defendant was actually convicted of and the generic crime of receiving and concealing. MCL 750.535; MSA 28.803." The prosecution argues that any such errors redounded to defendant's benefit, and states that the prosecution is in "no position to request at this late stage any relief with respect to [such errors]."

In any event, defendant has served his minimum sentence and this Court has held that the question whether a sentence is proportionate is moot if the defendant has already served his minimum sentence. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 260 (1994).

## II

Defendant Amad Adkins' first claim of error is that his constitutional right to be free from being placed twice in jeopardy for the same offense was violated by his convictions for both carrying a concealed weapon [CCW] and receiving or concealing a stolen firearm, based on the same act.

Because the statutes seek to prevent different social harms, and because the elements of each offense are distinct, we conclude that no constitutional violation occurred. *People v Sturgis*, 427 Mich 392, 400, 407; 397 NW2d 783 (1986); *People v Robideau*, 419 Mich 458, 486; 355 NW2d 592 (1984); *People v Kaczorowski*, 190 Mich App 165, 169; 475 NW2d 861 (1991).

The purpose of the CCW statute “is to prevent quarreling or criminal persons from suddenly drawing hidden weapons without notice to other persons.” *People v Wright*, 97 Mich App 411, 413; 296 NW2d 46 (1980). The statute provides for a maximum penalty of five years. MCL 750.227(3); MSA 28.424(3). In contrast, MCL 750.535b(2); MSA 28.803(2)(2) proscribes the bartering, selling, disposing of, pledging or accepting of knowingly stolen firearms, in addition to prohibiting receiving and concealing such firearms. This language indicates that the Legislature enacted this provision in order to punish trafficking in stolen weapons. Because the social harms the statutes intend to prevent are distinct, defendant could legitimately be punished under both provisions. *Robideau*, *supra* at 487. Although the CCW statute provides for a lesser penalty than the receiving and concealing stolen firearms statute, there is no indication that any hierarchical structure was intended by the Legislature in view of the different harms addressed and the fact that the statutes do not condition the increased penalty on the presence of aggravating factors. *Robideau*, *supra* at 487-488; *Sturgis*, *supra* at 407.

However, we conclude that defendant’s multiple convictions for receiving and concealing a stolen firearm and receiving and concealing stolen ammunition are contrary to the legislative intent. Our Supreme Court held in *People v Wakeford*, 418 Mich 95, 112; 341 NW2d 68 (1983), that “[t]he appropriate ‘unit of prosecution’ for larceny is the taking at a single time and place without regard to the number of items taken.” By analogy, we conclude the Legislature did not intend to subject a defendant to multiple convictions under the receiving and concealing statute on the basis of each gun or bullet received or concealed. *Sturgis*, *supra* at 488; *People v Ayers*, 213 Mich App 708, 719; 540 NW2d 791 (1995). In the instant case, the guns and the ammunition were stolen in a single burglary and were received by defendant in a single unit.<sup>3</sup> Therefore, we vacate defendant’s conviction for receiving and concealing stolen ammunition.

Further, we agree with defendant that the felony-firearm sentence should run consecutively only to the sentence for the underlying felony of assault with intent to murder. *People v Cortez*, 206 Mich App 204, 207; 520 NW2d 693 (1994). Defendant’s judgment of sentence is ordered amended to clarify that the felony-firearm sentence runs preceding and consecutively only to defendant’s sentence for assault with intent to murder, and to reflect the same credit for time served on the other sentences as granted on his felony-firearm sentence.

Defendant also argues that the trial court violated the principle of proportionality by sentencing a sixteen year old offender who had never had an opportunity to benefit from juvenile placement to a term of twenty-five to fifty years’ imprisonment. Defendant relatedly argues that the trial court abused its discretion by failing to articulate at sentencing the reasons for imposing the sentence.

At sentencing the trial court stated that “[t]he Court feels that this sentence is proportionate to the circumstances of the offense and the offender.” It sentenced defendant to the maximum sentence within the guidelines range of ten to twenty-five years.

To facilitate appellate review, the trial court must articulate on the record at sentencing the criteria considered and the reasons for the sentence imposed. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). We conclude that the trial court’s statement at sentencing was sufficient under the circumstance that the trial court had, less than one month before sentencing, issued an opinion and order regarding sentencing defendant as an adult, in which it articulated a number of factors which would constitute permissible considerations at sentencing, including that defendant had a lengthy juvenile record exhibiting a pattern of assaultive behavior, defendant was “socially maladjusted with little or no control over his impulses,” defendant became involved with gangs at an early age and was a member of a gang at the time of the instant offenses, defendant and his brother chased after the victim and fired two shots, defendant’s history of assaultive behavior continued after being placed in a juvenile detention center in 1993 and must be considered a threat to other juveniles and their rehabilitation, and that defendant would pose a danger to the public if released at the age of twenty one. Under these circumstances, we conclude that remanding for a statement of the reasons sentence was imposed would be a waste of judicial resources.

As to defendant’s challenge to the proportionality of his sentence, the sentence was within the guidelines range and is presumptively neither excessively severe nor unfairly disparate. *People v Broden*, 428 Mich 343, 354-355, 408 NW2d 789 (1987); *People v Clark*, 207 Mich App 500, 526 NW2d 357 (1994). Although a sentence within a guidelines range can conceivably be disproportionate in unusual circumstances, *Milbourn, supra* at 661, a defendant must present unusual circumstances to the court before sentence is imposed, or the issue is waived. *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992). Defendant presented no unusual circumstances below.

Lastly, we address defendant’s claims that the trial court abused its discretion in sentencing defendant as an adult and that it relied on inaccurate information. Defendant did not object to the information when provided to the court, and it does not appear that the information was central to the court’s decision. Further, we conclude the record does not support that the trial court abused its discretion or clearly erred in assessing the statutory factors. *People v Passeno*, 195 Mich App 91, 103-104; 489 NW2d 152 (1992); MCR 2.613(C).<sup>4</sup>

Defendant Devro Adkins’ conviction and sentence are affirmed. Defendant Amad Adkins’ conviction for receiving and concealing stolen ammunition is vacated, but his other convictions and sentences are affirmed, except that we order his judgment of sentence amended to reflect that only his sentence for assault with intent to murder is to run consecutive to his felony-firearm sentence, and that credit for days served is to be applied to his other sentences.

/s/ Donald E. Holbrook, Jr.

/s/ Helene N. White

/s/ Stanley J. Latreille

<sup>1</sup> The Court stated:

“these sentencing guidelines do not reflect these circumstances. The Court is going to impose the maximum penalty of 40 months to 60 months.”

<sup>2</sup> The SIR is crossed out with a large “X” and bears the handwritten words “not applicable.” The Basic Information Report prepared in this case states that the sentencing guidelines are not applicable.

<sup>3</sup> Defendant’s acts in later separating one of the guns from the other stolen items does not constitute a separate receiving and concealing offense. Rather, that conduct constituted the CCW offense.

<sup>4</sup> In light of our disposition, we need not address defendant’s argument that the case should be reassigned to a different judge.