

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYREESE IVEY,

Defendant-Appellant.

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UNPUBLISHED

April 25, 1997

No. 188572

Recorder's Court

LC No. 95-002471

Before: Cavanagh, P.J., and Reilly and White, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to eight to thirty years' imprisonment on the assault with intent to commit murder conviction, consecutive to a two-year sentence for the felony-firearm conviction. We affirm.

On appeal, defendant raises several issues pertaining to the trial court's decision to sentence him as an adult. Defendant first contends that the trial court erred in making its findings of fact at defendant's juvenile sentencing hearing, because the court emphasized the seriousness of defendant's crime and its duty to protect the public over defendant's need and ability to be rehabilitated. We disagree.

Our review of the trial court's findings convinces us that the court did not clearly err. *People v Brown*, 205 Mich App 503, 504-505; 517 NW2d 806 (1994). Rather, the court made specific findings on all of the factors that it was required to consider when sentencing defendant as an adult pursuant to MCR 6.931(E)(3), and MCL 769.1(3); MSA 28.1072(3). *Brown*, 205 Mich App at 505. The court found that defendant had a history of absenteeism and fighting in school, was known in his family as a liar, admitted using marijuana and had previously been charged with unlawfully driving away an automobile. The court also found that defendant's scholastic and social performance improved only when he was placed in "a highly structured setting where his freedoms are restricted," and that

defendant's improvement may have been an attempt to "get away" with anti-social behavior in the future. The trial court further noted that defendant would not be helped by the "peer pressure" rehabilitation programs employed by a youth home, because defendant would be associating with non-assaultive youths. Finally, the trial court correctly emphasized the seriousness of defendant's crime and its need to protect the public. Complainant was shot in the head at point-blank range. We cannot therefore criticize the trial court's conclusion that showing leniency to defendant could encourage him to commit future assaults, and hold that the trial court did not err in making its findings of fact.

Defendant next argues that the trial court abused its discretion in sentencing him as an adult. We disagree. Not only was the trial court's sentence based on a thorough consideration of all of the relevant factors, as we have already discussed, it was also at the bottom of the Michigan Sentencing Guidelines range and proportionate to the characteristics of the offense and the offender. *People v Lyons (On Remand)*, 203 Mich App 465, 468; 513 NW2d 170 (1994); *People v Tyler*, 188 Mich App 83, 85; 468 NW2d 537 (1991). Defendant shot complainant through the head, damaging his eyesight. Complainant was considered brain dead for two days after the shooting and could not talk for two months after the shooting. A shell from a nine-millimeter gun was found near the shooting scene. Defendant had previously been charged with a crime, and had a history of disruptive behavior in school, of lying to his family, and of substance abuse. Therefore, we hold that the trial court did not abuse its discretion in sentencing defendant as an adult, *People v Haynes*, 199 Mich App 593, 595; 502 NW2d 758 (1993), and the sentence imposed was proportionate. *Lyons*, 203 Mich App at 468 citing *People v Milborn*, 435 Mich 630; 461 NW2d 1 (1990).

Finally, defendant argues that the trial court erred in basing its sentence on defendant's refusal to admit guilt. We disagree. The trial court never tried to force defendant to admit guilt. Further, its comments on defendant's refusal to take responsibility for his crime were based on its concern that defendant was not amenable to rehabilitation. A trial court may consider a defendant's lack of remorse in determining his or her potential for rehabilitation. *People v Drayton*, 168 Mich App 174, 178; 423 NW2d 606 (1988); *People v Badour*, 167 Mich App 186, 199; 421 NW2d 624 (1988) rev'd on other grounds, 434 Mich 691; 456 NW2d 391 (1990). Finally, the court's emphasis on the seriousness of defendant's crime and his lack of good character, in making its findings of fact, suggest that the trial court did not sentence defendant more severely because defendant failed to admit guilt. *Badour*, 163 Mich App at 199, citing *People v Wesley*, 428 Mich 708, 713; 411 NW2d 159 (1987). We conclude, therefore, that the trial court did not abuse its discretion in considering defendant's failure to take responsibility for his crime when imposing sentence.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Maureen Pulte Reilly  
/s/ Helene N. White