

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD JAMAL DUDLEY,

Defendant-Appellant.

UNPUBLISHED

June 27, 1997

No. 190974

Recorder's Court

LC No. 94-012209

Before: Markey, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of voluntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was originally charged with first-degree murder, MCL 750.316; MSA 28.548, and felony-firearm, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to ten to fifteen years' imprisonment for the voluntary manslaughter conviction, to be served consecutive to two years' imprisonment for the felony-firearm conviction. We affirm defendant's convictions, but remand for resentencing.

Defendant argues that the trial court erred in denying his motion for a directed verdict, brought at the close of the prosecution's case, on the first-degree murder charge. Defendant claims that insufficient evidence was presented for a rational trier of fact to conclude that the elements of premeditation and deliberation were proven beyond a reasonable doubt. We disagree.

In order to convict a defendant of first-degree murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Premeditation and deliberation require sufficient time to allow the defendant to take a second look, and may be inferred from the circumstances surrounding the killing. *Id.*

Here, the prosecution presented evidence which established that, prior to the killing, the victim was angry with defendant and destroyed a vehicle in order to provoke defendant; that after defendant saw the vehicle, he went to the victim's home, waited for the victim to come out, and then shot him; that no gun was found on the victim or near the scene to support defendant's self-defense claim; and that

immediately after the shooting, defendant fled and attempted to destroy evidence by throwing the gun he admittedly used to shoot the victim down a sewer, and gave a false name to the arresting officer once apprehended. Therefore, we conclude that, in viewing the evidence in a light most favorable to the prosecution up to the time the motion was made, a rational trier of fact could have found that the elements of premeditation and deliberation were proven beyond a reasonable doubt. *People v Davis*, 216 Mich App 47, 52-53; 549 NW2d 1 (1996); *Anderson, supra*.

Defendant next argues that he was denied the effective assistance of counsel when his attorney failed to challenge the legality of his arrest. Defendant claims that such a challenge would have been successful and, therefore, his statement made to the police would have been inadmissible as the fruit of the poisonous tree. We disagree.

Because defendant failed to move for an evidentiary hearing or new trial on this basis, we will review this issue only to the extent that the alleged error is apparent on the record. *People v Johnson*, 144 Mich App 125, 129-130; 373 NW2d 263 (1985). Here, the record indicates that defendant voluntarily went with the arresting officer under the premise that he was defendant's cousin, and was going to the police station to aid the police in their apprehension of defendant. Therefore, we conclude that the defense attorney's failure to challenge the legality of the arrest was not deficient and did not fall below an objective standard of reasonableness. *People v Hurst*, 205 Mich App 634, 640-641; 517 NW2d 858 (1994). Accordingly, defendant's claim on this issue fails.

Finally, defendant argues that he is entitled to resentencing because the sentencing court erroneously scored the sentencing guidelines. Defendant claims that the court improperly scored OV 3, OV 9, and OV 13. Because defendant failed to object to the court's scoring of OV 3 and OV 13, he abandoned his challenge to these variables for appellate review. *People v Walker*, 428 Mich 261, 266; 407 NW2d 367 (1987). Further, because there was evidence presented to support a finding that defendant was assisted by another man in luring the victim out to defendant's car, we conclude that the court did not abuse its discretion in scoring OV 9 at ten points. See Michigan Sentencing Guidelines (2d ed, 1988), p 78; *People v Jarvi*, 216 Mich App 161, 163; 548 NW2d 676 (1996).

However, we agree with defendant that, based upon the offense variable scores, the sentencing guidelines range was twenty-four to eighty-four months, not 48 to 120 months as the court stated. Therefore, when the court sentenced defendant to a minimum term of ten years' imprisonment for the voluntary manslaughter conviction, it unknowingly exceeded the guidelines range. Accordingly, we remand for resentencing so that the trial court can determine if a lesser sentence is appropriate given the correct guidelines range of twenty-four to eighty-four months. *People v Garner*, 215 Mich App 218, 220; 544 NW2d 478 (1996). However, we note that the trial court is free to impose the same sentence as long as it articulates its reasons for exceeding the sentencing guidelines. *People v Kreger*, 214 Mich App 549, 554; 543 NW2d 55 (1995).

We affirm defendant's convictions, but remand for resentencing on the manslaughter conviction. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra