

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD CHARLES SMITH,

Defendant-Appellant.

UNPUBLISHED

July 29, 1997

No. 194110

Recorder's Court

LC No. 94-011750

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Defendant appeals by right his jury convictions for assault with intent to murder and felony firearm, and resulting 20 to 30 year and 2 year consecutive sentences. Defendant contends that his 20 to 30 year sentence for assault with intent to murder, which slightly exceeds the guideline range of 7 to 15 years, is disproportionate to the offense and the offender.

The Michigan Supreme Court has recently clarified that the key test of proportionality is not whether a sentence departs from or adheres to the recommended guideline range, but whether it reflects the seriousness of the matter before the court. *People v Lemons*, 454 Mich 234; 562 NW 2d 562 (1997). Here, defendant shot his victim in the chest and stomach after she rejected his request for sexual favors, then shot her in the back after she fell to the ground. Only the miracles of modern medicine and happenstance prevented this crime from being premeditated murder. The trial court did not abuse its sentencing discretion and the sentence imposed is not disproportionate to the offense and the offender.

Affirmed.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn

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