

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK MATTHEWS,

Defendant-Appellant.

UNPUBLISHED

August 26, 1997

No. 194344

Kent Circuit Court

LC No. 95-000486-FC

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Defendant appeals by right his plea bargained convictions of assault with intent to commit great bodily harm and possession of a firearm during the commission of a felony, reduced from assault with intent to commit murder, concomitant dismissal of the prosecutor's attempt to obtain supplementation based on defendant's third offender status, and resulting five- to ten- and two-year sentences, respectively.

Although defendant is already serving sentences for violations of the controlled substance provisions of the Public Health Code, to which the trial court made the five- to ten-year sentence for assault with intent to commit great bodily harm concurrent, despite the fact the offense was committed while defendant was on bond for the drug charges and therefore subject to consecutive sentencing, defendant nonetheless contends that his sentences are disproportionate to the offenses and the offender. In this respect, defendant had a contemporaneous guilty plea in another lower court file, L.C. No. 95-000302 FH, to resisting and obstructing a police officer, and his criminal background includes several assaultive offenses. Defendant has failed to overcome the presumption that a sentence within the guideline range is proportionate to the offense and the offender. *People v Eberhardt*, 205 Mich App 587; 518 NW2d 511 (1994). Particularly in light of the fact that, by virtue of a plea bargain, defendant avoided possible conviction of a capital crime as well as a potential doubling of his sentence as a

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

habitual offender, this Court is disinclined to find an abuse of sentencing discretion. *People v Williams*, 223 Mich App ____; ____ NW2d ____ (No. 194996, May 13, 1997).

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell