

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEBRA ANN GENTRY,

Defendant-Appellant.

UNPUBLISHED

September 16, 1997

No. 194161

Recorder's Court

LC No. 95-005726

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by right her bench trial conviction of voluntary manslaughter, MCL 750.321; MSA 28.553, and resulting 10 to 15 year sentence. This case is being decided without oral argument pursuant to MCR 7.215(E). We affirm.

On June 30, 1995, trial in this case was scheduled for November 15, 1995. The appointed attorney who then represented defendant, however, became embroiled in personal difficulties that eventually led to his disbarment. On October 19, 1995, defendant wrote a letter to the trial court, requesting that new counsel be appointed, and substitute counsel was duly appointed on October 26th. On November 9, 1995, a pretrial conference was held for the apparent sole purpose of introducing defendant to her new attorney; substitute counsel expressed no reservations at that time about the scheduled November 15 trial date. However, on November 14, after defendant waived her right to trial by jury, counsel requested a continuance, asserting, without factual elaboration, that he had had insufficient time to interview witnesses. No explanation was advanced as to why the 20 days between October 26 and November 15 were insufficient, nor did counsel indicate any difficulty in contacting witnesses, reviewing police reports, or otherwise in obtaining discovery from the prosecution. At the eventual bench trial, the defense theory was that defendant was guilty only of voluntary manslaughter, rather than the original charge of second degree murder, and the trier of fact was duly persuaded. On this record, the trial court did not abuse its discretion in denying defendant's motion for continuance. *People v Suchy*, 143 Mich App 136, 142; 371 NW2d 502 (1985).

Defendant further contends that her ten to fifteen year sentence is disproportionate to the offense and the offender. Defendant's criminal record includes three prior felony convictions and three misdemeanors. The incident itself involved defendant provoking a verbal confrontation with the victim, which escalated into a mildly physical confrontation, into which defendant then introduced deadly force. Defendant's sentence is within the guideline range, and on this record defendant has failed to rebut 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). This principle applies even though defendant has received the maximum sentence advocated by the guidelines. *People v Vettese*, 195 Mich App 235, 247; 489 NW2d 514 (1992).

Affirmed.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski