

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDWARD ARNEY,

Defendant-Appellant.

UNPUBLISHED

March 1, 2005

No. 252180

Macomb Circuit Court

LC No. 2001-000161-FC

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of armed robbery, MCL 750.529, and originally sentenced to 15 to 50 years' imprisonment. In a prior appeal, this Court affirmed defendant's conviction, but remanded for resentencing.¹ At resentencing, the trial court sentenced defendant to 6½ to 35 years' imprisonment. Defendant again appeals as of right, claiming that the new sentence was excessive and constitutes cruel and unusual punishment. We affirm. This case is being decided without oral argument under MCR 7.214(E).

A sentence that falls within the guidelines' range does not constitute cruel and unusual punishment. See *People v McLaughlin*, 258 Mich App 635, 669-671; 672 NW2d 860 (2003). Defendant's sentence fell within the guidelines range of 51 to 85 months. Therefore, this Court must affirm the sentence unless the lower court erred in scoring the guidelines or relied upon inaccurate information. *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003). Defendant does not argue that the trial court erred in the scoring of the guidelines or relied on inaccurate information in determining his sentence, and therefore, his sentence must be affirmed. *Id.*; MCL 769.34(10).

Defendant next claims that he was denied his right to a jury trial when the trial court made factual findings when scoring his offense variable factors. In support of that assertion, defendant relies on the United States Supreme Court's decision in *Blakely v Washington*, 542 US ___; 124 S Ct 2531; 159 L Ed 2d 403 (2004). However, our Supreme Court has held that

¹ *People v Arney*, unpublished opinion per curiam of the Court of Appeals, issued March 20, 2003 (Docket No. 236875).

Blakely does not apply to Michigan's sentencing scheme. *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004).

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio