

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
August 20, 2013

v

RICHARD LAMONT MILLER,
Defendant-Appellant.

No. 310041
Wayne Circuit Court
LC No. 11-006604-FC

Before: BOONSTRA, P.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of voluntary manslaughter. MCL 750.321. The trial court sentenced defendant to 18 to 30 years' imprisonment. Defendant appeals of right. We affirm.

Defendant argues that his sentence is cruel and/or unusual punishment under both the Michigan and Federal Constitutions. We disagree.

If a sentence is within the statutory guidelines, a defendant may preserve a claim of cruel and/or unusual punishment by raising "grounds for objection either at the time of sentencing or in a motion for resentencing." *People v McLaughlin*, 258 Mich App 635, 669-670; 672 NW2d 860 (2003). At sentencing, defendant did not raise grounds for objection or move for resentencing. As a result, this issue is unpreserved.

This Court reviews an unpreserved, constitutional error under the plain error rule. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). Under this rule, defendant must prove that "(1) [the] error . . . occurred, (2) the error was plain, i.e., clear or obvious, (3) and the plain error affected substantial rights." *Carines*, 460 Mich at 763. Furthermore, "once a defendant satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse." *Carines*, 460 Mich at 763. Discretion to reverse is only appropriate if the forfeited error caused a conviction of an innocent defendant or if the error "'seriously affected the fairness, integrity, or public reputation of judicial proceedings' independent of the defendant's innocence." *Carines*, 460 Mich at 763, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993).

Defendant argues his sentence is cruel and/or unusual punishment under both United States and Michigan constitutional prohibitions against cruel and/or unusual punishment. US

Const, Am VIII; Const 1963, art 1, § 16. “[T]he Michigan provision prohibits ‘cruel or unusual’ punishments, while the Eighth Amendment bars only punishments that are both ‘cruel and unusual.’” *People v Bullock*, 440 Mich 15, 30; 485 NW2d 866 (1992). Accordingly, the federal constitution provides narrower protection than the Michigan constitution. *People v Nunez*, 242 Mich App 610, n 2; 619 NW2d 550 (2000). As a result, if a sentence “passes muster under the state constitution, then it necessarily passes muster under the federal constitution.” *Id.* “[A] sentence within the guidelines range is presumptively proportionate.” *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008), citing *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). “[A] sentence must be proportionate to the seriousness of the crime and the defendant’s prior record. If an habitual offender’s underlying felony and criminal history demonstrate that he is unable to conform his conduct to the law, a sentence within the statutory limit is proportionate.” *People v Colon*, 250 Mich App 59, 65; 644 NW2d 790 (2002), quoting *People v Compeau*, 244 Mich App 595, 598-599; 625 NW2d 120 (2001). Furthermore, a proportionate sentence is not cruel or unusual punishment. *Powell*, 278 Mich App at 323, citing *People v Drohan*, 264 Mich App 77, 92; 689 NW2d 750 (2004).

Defendant’s sentence is not cruel and/or unusual. Defendant argues that his 18-year minimum sentence is cruel and/or unusual because it exceeds the 15-year maximum sentence allowed by law under the voluntary manslaughter statute. We disagree. Defendant fails to take into account the sentencing guidelines. The minimum sentencing guidelines range for a Class C offense, with defendant’s offense variables totals, prior record variables totals, and defendant’s fourth habitual offender status, is 62 to 228 months. MCL 777.64. Defendant was sentenced to a minimum term of 18 years’ imprisonment. Therefore, defendant’s minimum sentence is within the minimum sentencing guidelines range. As a result, defendant’s sentence is presumptively proportionate. A proportionate sentence is not cruel or unusual punishment. *Powell*, 278 Mich App at 323, citing *Drohan*, 264 Mich App at 92. Therefore, defendant’s sentence does not constitute cruel and/or unusual punishment.

Additionally, defendant argues his sentence is cruel and/or unusual because the maximum sentence exceeds the 15-year maximum pursuant to MCL 750.321. We disagree. Pursuant to MCL 769.12, when a defendant has been convicted of three or more felonies, the trial court may impose an enhanced sentence. “If the subsequent felony is punishable upon a first conviction by imprisonment for a maximum term of 5 years or more or for life, the court . . . may sentence the person to imprisonment for life or for a lesser term.” MCL 769.12(1)(b). In this case, defendant is a fourth habitual offender, MCL 769.12(1). Voluntary manslaughter is punishable by a maximum term of 15 years. MCL 750.321. This exceeds the maximum term of five years or more required under MCL 769.12(1)(b). As a result, the trial court had the authority to sentence defendant to a maximum term of 30 years’ imprisonment.

In addition, defendant argues his sentence is cruel and/or unusual because the trial court punished him for his criminal record and did not consider his rehabilitation efforts. Trial courts are afforded sentencing discretion because trial judges have firsthand knowledge of the case and the offender. *People v Smith*, 482 Mich 292, 352; 754 NW2d 284 (2008), citing *People v Babcock*, 469 Mich 247, 270; 666 NW2d 231 (2003). To determine if a sentence is cruel or unusual, courts consider various factors including rehabilitation. *People v Dipiazza*, 286 Mich App 137, 153-154; 778 NW2d 264 (2009), citing *People v Launsburry*, 217 Mich App 358, 363; 551 NW2d 460 (1996). Defendant argues that he has made rehabilitation efforts because he has

the support of his sister who took him into her home. However, defendant has an extensive criminal record that demonstrates a lack of rehabilitation efforts. At sentencing, the trial judge considered defendant's family support and criminal record. As a result, the trial judge considered defendant's rehabilitation efforts in sentencing. Accordingly, defendant's sentence does not constitute cruel and/or unusual punishment.

Affirmed.

/s/ Mark T. Boonstra

/s/ David H. Sawyer

/s/ Christopher M. Murray