

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD RODNEY BALLARD,

Defendant-Appellant.

UNPUBLISHED

April 16, 1996

No. 183913

LC No. 94-002968 FH

95-003040 FH

Before: Cavanagh, P.J., and Marilyn Kelly and J.R. Johnson,* JJ.

MEMORANDUM.

Defendant pleaded guilty of breaking and entering a dwelling, MCL 750.110a; MSA 28.305(a), and felonious assault, MCL 750.82; MSA 28.277. Defendant was also convicted of a separate count of breaking and entering. The trial court sentenced defendant to forty-two months to twenty years' imprisonment. Defendant appeals his sentence as of right, and we affirm.

Defendant argues that he is entitled to resentencing because the trial court considered him guilty of violating probation, without any formal adjudication of the issue, and therefore imposed a disproportionate sentence on that basis. This Court reviews a sentencing court's decision under an abuse of discretion standard. *People v McCrady*, 213 Mich App 474, 483; 540 NW2d 718 (1995). After carefully reviewing the record, we find no abuse of discretion. The trial court merely noted that defendant had been on probation when the offenses in question occurred. Defendant's sentences are within the guidelines and are therefore presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant has not presented the sentencing court and this Court with any mitigating factors sufficient to overcome the principle of proportionality. *People v Eberhardt*, 205 Mich App 587, 591; 518 NW2d 511 (1994). Defendant's sentences are proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

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

Affirmed.

/s/ Mark J. Cavanagh

/s/ Marilyn Kelly

/s/ J. Richardson Johnson