

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCELL DESHAUN JONES,

Defendant-Appellant.

UNPUBLISHED

August 9, 2005

No. 254262

Wayne Circuit Court

LC No. 03-010634-01

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of twenty-three months to ten years in prison for his conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant asserts that the trial court abused its discretion by exceeding the statutory sentencing guidelines and sentencing him to a minimum of twenty-three months for assault with intent to do great bodily harm less than murder. This Court reviews sentencing issues for an abuse of discretion by the trial court. *People v Sabin*, 242 Mich App 656, 660; 620 NW2d 19 (2000). The statutory sentencing guidelines for defendant's conviction of assault with intent to do great bodily harm less than murder established a minimum term range of ten to twenty-three months. This range represents a straddle cell. Under the statutory sentencing guidelines, if the upper limit of the guidelines range exceeds eighteen months and the lower limit of the range is twelve months or less, the trial court, absent a departure for substantial and compelling reasons, must sentence the offender to imprisonment with a minimum term within the range, or to an intermediate sanction that may include a term of imprisonment of not more than twelve months. MCL 769.34(4)(c); *People v Martin*, 257 Mich App 457, 459-460; 668 NW2d 397 (2003). The trial court sentenced defendant to twenty-three months to ten years for assault with intent to do great bodily harm less than murder, to be served consecutively to the mandatory two-year term for possession of a firearm during the commission of a felony, MCL 750.227b. The minimum term of twenty-three months was within the guidelines and was expressly authorized by statute. MCL 769.34(4)(c)(i). Therefore, the trial court did not abuse its discretion by imposing that sentence.

Defendant also asserts that he was denied his right to effective assistance of counsel, because trial counsel failed to object to the sentence imposed by the trial court. Whether a defendant has been denied effective assistance of counsel is a mixed question of fact and

constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). We review a trial court's finding of facts for clear error and questions of constitutional law de novo. *Id.* The trial court sentenced defendant within the statutory guidelines of ten to twenty-three months. Because these guidelines fell into a straddle cell, the trial judge had the discretion to impose either intermediate sanctions or sentence defendant within the statutory guidelines. *Martin, supra* at 459-460. Therefore, asserting that defendant's sentence does not fall within the sentencing guidelines is a meritless argument that counsel is not required to make. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000). Defendant was not denied his due process right to effective assistance of counsel.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray