

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES J. SWAIN,

Defendant-Appellant.

UNPUBLISHED

March 17, 2000

No. 206591

Oakland Circuit Court

LC No. 96-148870-FH

Before: Murphy, P.J., and Hood and Fitzgerald, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of wilfully and maliciously killing or injuring an animal, MCL 750.50b; MSA 28.245(b), and was sentenced to thirty-two months to four years in prison. He appeals as of right. We affirm.

On appeal, defendant raises only issues regarding the sentence imposed. Defendant first contends that his sentence was excessive because it exceeded the probation department's recommended sentence. We disagree. The trial court is not bound to consider sentences imposed by the probation department. *People v Grunbaum*, 170 Mich App 821, 828; 429 NW2d 239 (1988).

Defendant also contends that his sentence was not proportionate to the seriousness of the offense and the offender. Again, we disagree. The dog's death was caused by blunt force trauma that was so severe that it severed the dog's spinal cord and caused its eyeball to leave its socket. The severity of the dog's injuries evidences purposeful mutilation of the animal. Although only nineteen years of age at the time of the offense, defendant has a criminal history that is significant for his age, and his crimes have escalated in severity. The record indicates that defendant was not rehabilitated through boot camp or jail, and that he violated probation. After a thorough review of the record, we find that the sentence imposed, which is the maximum sentence mandated for this offense, is proportionate to the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ E. Thomas Fitzgerald