

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY JESSIE ESPINO, II,

Defendant-Appellant.

UNPUBLISHED

October 5, 1999

No. 207959

Recorder's Court

LC No. 97-002141

Before: Griffin, P.J., and Zahra and Pavlich*, JJ.

MEMORANDUM.

Defendant claims an appeal from his sentences for his convictions of one count of arson of a dwelling house, MCL 750.72; MSA 28.267, and eight counts of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, entered after a bench trial. We affirm.

Defendant and his codefendants Salazar and Orozco were originally charged with arson of a dwelling house and assault with intent to commit murder, MCL 750.83; MSA 28.278. The men drove to a home occupied by eight persons, including several children. Defendant remained in the vehicle while Salazar and Orozco fired shots from a high-powered rifle into the home and threw a firebomb into the home. The occupants of the home were uninjured, but their possessions were destroyed. The evidence established that defendant knew the intentions of Salazar and Orozco and willingly participated in the incident in order to exact revenge for a firebomb attack at his home the previous night.

The trial court sentenced defendant to a term of four to twenty years in prison for the conviction of arson, and to eight terms of two to ten years for the convictions of assault with intent to do great bodily harm less than murder, with credit for 161 days. The minimum term of four years was within the sentencing guidelines.

Defendant argues that the minimum four-year term is disproportionate to his circumstances and to those of the offense. We disagree and affirm. Sentence length is reviewed pursuant to the principle of proportionality. A sentence must be "proportionate to the seriousness of the circumstances

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

surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). A sentence that violates the principle of proportionality constitutes an abuse of discretion. The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). A sentence that falls within the guidelines is presumed to be proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). In imposing sentence, the trial court acknowledged defendant's lack of a prior record, and accepted as genuine his expression of remorse, but stated that the seriousness of the incident, along with the need to establish that the law could not be taken into one's own hands, warranted the four-year term. The court's comments indicated that it considered such pertinent factors as reformation of the offender, protection of society, disciplining of the wrongdoer, and deterrence of others. *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972). The factors cited by defendant, his lack of a prior adult record, his work history, and his family support do not overcome the presumption that the four-year term is proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Affirmed.

/s/ Richard Allen Griffin

/s/ Brian K. Zahra

/s/ Scott L. Pavlich