

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE DEBARDELABEN,

Defendant-Appellant.

UNPUBLISHED

January 31, 1997

No. 182072

Saginaw Circuit Court

LC No. 94-008964

Before: Taylor, P.J., and Gribbs, and R. D. Gotham,* JJ.

PER CURIAM.

Defendant was convicted by jury of two counts of first-degree premeditated murder, MCL 750.316; MSA 28.548, and one count each of breaking and entering an occupied dwelling, MCL 750.110; MSA 28.305, conspiracy to commit first-degree premeditated murder, MCL 750.157a; MSA 28.354(1), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The convictions arose from the shooting deaths of Frank Davis and Jeffrey Davis in an apartment in Saginaw on February 12, 1994. The trial court sentenced defendant, who was fifteen years old at the time of the incidents, as an adult and imposed concurrent terms of life imprisonment without parole on the murder and conspiracy convictions and ten to fifteen years on the breaking and entering conviction. He was also sentenced to two years for felony-firearm consecutive to and preceding the concurrent terms. Defendant appeals by right. We affirm.

Defendant, highlighting evidence that he may have been drunk on the night of the incident, asserts that the trial court committed error requiring reversal by denying the defense request to instruct the jury on the lesser offense of manslaughter. He argues that the jury should have had the opportunity to convict him of voluntary manslaughter. We disagree. Jury instructions are reviewed in their entirety to determine if there is error requiring reversal. *People v Davis*, 216 Mich App 47, 54; 549 NW2d 1 (1996). Voluntary manslaughter is a cognate lesser included offense to murder. *People v Cheeks*, 216 Mich App 470, 479; 549 NW2d 584 (1996); *People v Moore*, 189 Mich App 315, 319; 472 NW2d 1 (1991). A trial court is required to instruct on a cognate lesser offense if (1) it is of the same class or

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

category as the principal offense; and (2) the evidence at trial would support conviction of the cognate offense. *People v Hendricks*, 446 Mich 435, 444; 521 NW2d 546 (1994); *Cheeks, supra* at 479. However, contrary to defendant's position, voluntary intoxication cannot reduce a killing that would otherwise be murder to manslaughter. *People v Langworthy*, 416 Mich 630, 651-653; 331 NW2d 171 (1982). Also, in this case, there was no evidence that either homicide victim did anything that defendant could have reasonably perceived as provocation toward him. Accordingly, there was no evidence of the element of adequate provocation necessary to support a conviction of voluntary manslaughter. *People v Hess*, 214 Mich App 33, 38; 543 NW2d 332 (1995). Thus, the trial court properly refused to instruct the jury on voluntary manslaughter.

Contrary to defendant's argument, sentencing a juvenile to life imprisonment without parole for first-degree murder does not constitute cruel and/or unusual punishment. *People v Launsbury*, 217 Mich App 358, 364; 551 NW2d 460 (1996).

Defendant also argues that the trial court's decision to sentence him as an adult rather than a juvenile was an abuse of discretion. Our review of a trial court's decision to sentence a minor as an adult is bifurcated. First, the trial court's factual findings supporting its determination regarding each factor of MCL 769.1(3); MSA 28.1072(3) are reviewed under the clearly erroneous standard. The ultimate decision whether to sentence the minor as an adult is reviewed for an abuse of discretion. *Launsbury, supra* at 217 Mich App 362; *People v Lyons (On Remand)*, 203 Mich App 465, 467-468; 513 NW2d 170 (1994). In light of defendant's extensive prior juvenile record, the severity of the instant offenses and the failure of prior efforts to treat defendant as a juvenile offender, the trial court did not clearly err by essentially finding that each statutory factor favored sentencing defendant as an adult and, accordingly, did not abuse its discretion by deciding to sentence him as an adult. See *Launsbury, supra* at 362-363.

Affirmed.

/s/ Clifford W. Taylor

/s/ Roman S. Gribbs

/s/ Roy D. Gotham