

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALEX ANTHONY RAINS,

Defendant-Appellant.

UNPUBLISHED

April 8, 1997

No. 180262

Recorder's Court

LC No. 93-011555

Before: MacKenzie, P.J., and Wahls and Markey, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to twenty-two to sixty years' imprisonment for the murder conviction and a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant contends that his sentence, which was within the guidelines' recommended range of eight to twenty-five years, was disproportionately harsh. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The claim is without merit. A sentence within the guidelines' range is presumptively proportionate. *People v Broden*, 428 Mich 343; 408 NW2d 789 (1987). Defendant has failed to present mitigating factors sufficient to overcome that presumption. See *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). In light of the circumstances surrounding both the offender and this offense, we find no abuse of discretion in the sentence imposed. *Milbourn, supra*.

In his supplemental brief, submitted *in propria persona*, defendant contends that certain "newly discovered evidence," that defendant was being treated as a patient by Dr. Saul I. Weingarden, affects the credibility of the determination that defendant was competent to stand trial. The claim is without merit for the reason that defendant's medical treatment was discoverable and producible at the time of the competency hearing. See *People v Davis*, 199 Mich App 502, 515; 503 NW2d 457 (1993).

Defendant next claims in his supplemental brief that his statement to the police should have been suppressed. Specifically, defendant appears to argue that the statement was coerced because it was taken after he requested to speak with an attorney, contrary to *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). At defendant's *Walker* hearing [*People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965)], officer Felix Kirk testified that defendant signed a waiver of rights form before he gave his statement, and at no time did defendant request an attorney. The trial court found this testimony to be credible and concluded that defendant's statement was voluntary. This Court gives deference to the trial court's superior ability to judge the credibility of the witnesses, and will not reverse the trial court's findings unless they are clearly erroneous. *People v Etheridge*, 196 Mich App 43, 57, 492 NW2d 490 (1992). Here, because the record supports the trial court's findings, reversal is not required.

Defendant next argues in his supplemental brief that he was denied a fair trial due to prosecutorial misconduct. First, defendant contends that during the prosecution's direct examination of witnesses Keith Terry and Michelle Ridley the prosecutor vouched for the witnesses' credibility. We cannot assess the claim concerning Keith Terry because that individual was not called as a witness. Further, a review of Ridley's testimony fails to reveal any instances of prosecutorial vouching. Finally, Ridley's testimony, that defendant showed her a .380 Colt handgun, did not concern "recognized scientific, technical, or other specialized knowledge," MRE 702, and therefore did not constitute improper expert testimony. Defendant was not denied a fair and impartial trial by the prosecutor's questions. *People v Wilson*, 196 Mich App 604, 609; 493 NW2d 471 (1992).

We also reject defendant's argument in his supplemental brief that his confession was admitted in violation of the corpus delicti rule. In Michigan, the corpus delicti of murder requires proof both of a death and of some criminal agency. *People v McMahan*, 451 Mich 543, 549; 548 NW2d 199 (1996). In this case, before defendant's statement was admitted, the prosecution presented evidence that the victim was shot in the head in his car, his body was then removed and left in an alley, and the car was driven away. The body was later discovered by the police. This evidence was sufficient to establish a death and criminal agency. There was no violation of the corpus delicti rule. *McMahan, supra*.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Myron H. Wahls
/s/ Jane E. Markey