

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VICTOR LAMAR WATERFORD,

Defendant-Appellant.

UNPUBLISHED

June 24, 1997

No. 197604

Recorder's Court

LC No. 91-2694

Before: Gage, P.J., and Reilly and Hoekstra, JJ.

MEMORANDUM.

Following remand for resentencing pursuant to this Court's opinion in Docket No. 149594 and the Supreme Court's modification thereof, *People v Waterford*, 450 Mich 1007; 544 NW2d 476 (1996), defendant was resentenced to the same 25 to 50 year term for assault with intent to murder and a 2 year consecutive sentence for felony firearm. He appeals by right; this case is being decided without oral argument pursuant to MCR 7.214(E).

Assuming the challenge to the proportionality of defendant's 25 to 50 year sentence for assault with intent to murder is not rendered moot by virtue of the fact that he is serving a nonparoleable life sentence for first degree murder affirmed in this Court's Docket No. 149593, *People v Turner*, 213 Mich App 558, 585; 540 NW2d 728 (1995); *People v Passeno*, 195 Mich App 91, 102; 489 NW2d 152 (1992), defendant's sentence is within the guidelines and therefore presumptively proportionate to the offense and the offender. Where, since the previous sentencing date, defendant's institutional record has deteriorated, as reflected in the presentence report, defendant has failed to overcome that presumption. *People v Eberhardt*, 205 Mich App 587; 518 NW2d 511 (1994). Defendant's criminal history and the circumstances of the offense, notwithstanding that defendant's own firearm may have been inoperable, suffice to satisfy this Court that the presumption of proportionality has not been overcome even though the defendant's minimum sentence is at the maximum of the guideline range. *People v Vettese*, 195 Mich App 235, 247; 489 NW2d 514 (1992).

Affirmed.

/s/ Hilda R. Gage
/s/ Maureen Pulte Reilly
/s/ Joel P. Hoekstra