

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES HENRY BROOKS

Defendant-Appellant.

UNPUBLISHED

July 15, 1997

No. 190138

Jackson Circuit Court

LC No. 94-18290 FC

Before: White, P.J., and Bandstra and Smolenski, JJ.

PER CURIAM.

Defendant pleaded guilty to assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant, a minor, was sentenced as an adult to consecutive terms of two years' imprisonment for the felony-firearm conviction and three to ten years' imprisonment for the assault conviction. Defendant appeals as of right. We affirm.

Defendant's convictions arise out of an incident in which defendant, a gang member, fired gunshots at a group of rival gang members. On appeal, defendant takes issue with the trial court's decision to sentence him as an adult.

After reviewing the record, we conclude that the trial court's factual findings with respect to the applicable factors, see MCL 769.1(3); MSA 28.1072(3) and MCR 6.931(E)(3); were not clearly erroneous. *People v Launsbury*, 217 Mich App 358, 362; 551 NW2d 460 (1996). Further, the trial court's ultimate decision to sentence defendant as an adult did not constitute an abuse of discretion. *Id.* Finally, the sentences themselves did not constitute an abuse of discretion. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994); *People v Passeno*, 195 Mich App 91, 103-104; 489 NW2d 152 (1992). Legislatively mandated sentences are presumed to be proportionate and valid. *People v Johnson (On Remand)*, ___ Mich App ___; ___ NW2d ___ (Docket No. 194515, issued 4/22/97). The sentence for defendant's assault conviction was presumptively proportionate where it was within the sentencing guidelines' recommended minimum sentence range of twenty-four to sixty months. *Daniel, supra*. A sentencing court need not consider the length of a consecutive mandatory

sentence when setting an indeterminate sentence. *People v Miles*, 454 Mich 90, 95; 559 NW2d 299 (1997).

Affirmed.

/s/ Helene N. White

/s/ Richard A. Bandstra

/s/ Michael R. Smolenski