

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIO DARNELL FRIDAY,

Defendant-Appellant.

UNPUBLISHED

July 29, 1997

No. 182604

Recorder's Court

LC No. 94-000918

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction for second degree murder and felony firearm and resulting sentences of 25 to 65 years imprisonment plus 2 years on the gun charge. His sole contention on appeal is that, in light of his lack of prior criminal record and his youth, the sentence imposed is disproportionate to the offense and the offender.

The trial court found as fact at the conclusion of trial that defendant, without the slightest justification or legitimate concern for his own safety, shot the victim in the back five times with a semi-automatic pistol. The animosity between defendant and the victim was related to a dispute over their activities as members of a ring of car thieves. The sentence imposed is within the guideline range and defendant has failed to overcome the presumption, on this record, that such a sentence is proportionate to the offense and the offender. *People v Eberhardt*, 205 Mich App 587; 518 NW2d 511 (1994).

Affirmed.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn

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