

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARQUELO MICHAEL,

Defendant-Appellant.

UNPUBLISHED

July 29, 1997

No. 190090

Recorder's Court

LC No. 87-004965 FC

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

MEMORANDUM.

After affirmance of defendant's convictions for second degree murder and armed robbery and remand for resentencing in *People v Michael*, 181 Mich App 236; 448 NW2d 786 (1989), defendant appeals of right from the judgment entered on resentencing, of life imprisonment on each count. This case is being decided without oral argument pursuant to MCR 7.214(E).

Initially, defendant contends he was denied the effective assistance of counsel at resentencing because counsel inaccurately indicated to the sentencing judge that the guideline range included a possibility of life imprisonment, when according to defendant the correct guideline range was strictly one of 10 to 25 years imprisonment. In a subsidiary argument, defendant contends the trial judge erred in failing to resolve a dispute over the correct guideline range as the prosecutor contended the correct range was 12 to 25 years or life imprisonment. The lower court record contains a sentence information report signed by the sentencing judge indicating the guideline range was calculated at 10 to 25 years, so any misstatement of defendant's counsel was irrelevant and harmless and any dispute over the correct guideline range was resolved in defendant's favor. These contentions are therefore meritless as a basis for appellate relief. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defendant next contends that the trial court erred in imposing life sentences, which defendant contends are harsher than the original sentences of 100 to 150 years imprisonment. Such sentences cannot in any event be compared, being unlike in nature, *People v Carson*, 220 Mich App 662, 676-677; 560 NW2d 657 (1996), but defendant's life sentences leave him eligible for parole after ten

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

calendar years, while leaving open the possibility he will die in prison. MCL 791.234; MSA 28.2304. Under his original sentences, defendant would not have been parole eligible for something like 87.5 years. The trial court also accurately reflected on the brutal nature of the crime committed, see 181 Mich App at 237, and defendant's poor institutional record, involving additional assaultive conduct, as amply justifying such punishment without regard to the guideline range. The resulting sentences are not disproportionate to the offenses or the offender. *People v Lemons*, 454 Mich 234; 562 NW2d 447 (1997); *People v Hansford (After Remand)*, 454 Mich 320; 562 NW2d 460 (1997).

Affirmed.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn