

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVIN TERRELL SIMMONS,

Defendant-Appellant.

UNPUBLISHED
October 10, 1997

No. 193333
Recorder's Court
LC No. 92-004875

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

On a prior appeal of right, No. 158713, defendant's convictions of second degree murder, two counts of assault with intent to murder, and felony firearm were affirmed, but the cause was remanded for resentencing before a different judge. On this appeal of right from the resentencing, in which defendant received 25 to 50 years on each of the capital charges plus the statutorily mandated 2 years on the felony firearm charge, defendant contends that his sentences are disproportionate to the offenses and the offender under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We disagree.

In imposing these sentences, the sentencing judge noted the circumstances of the offenses, which among other things involved shooting one of the victims in the back of the head. On the prior appeal of right, this Court held that there was insufficient evidence of any kind of provocation to even warrant a jury instruction on voluntary manslaughter. *People v Pouncey*, 437 Mich 382; 471 NW2d 346 (1991). As defendant's sentences are within the guideline range, they are presumptively proportionate, and defendant has failed to overcome that presumption, *People v Eberhardt*, 205 Mich App 587, 591; 518 NW2d 511 (1994), even though the minimum sentence imposed is at the maximum end of the guideline range. *People v Vettese*, 195 Mich App 235, 247; 489 NW2d 514 (1992).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh
/s/ Henry W. Saad