

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KAMANIA KAZA BARCLAY,

Defendant-Appellant.

---

UNPUBLISHED  
October 10, 1997

No. 193398  
Recorder's Court  
LC No. 90-002456

AFTER REMAND

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

MEMORANDUM.

Defendant appeals by right his sentences, after remand for resentencing pursuant to this Court's decision on prior appeal of right, *People v Barclay*, 208 Mich App 670, 676-677; 528 NW2d 842 (1995) of life imprisonment on each of two counts of armed robbery, and 30 to 60 years for each of two counts of assault with intent to murder. Resentencing on the conviction for one count of arson was not within the scope of the remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In THE prior appeal of right, this Court found that the sentences imposed, identical to those imposed after resentencing, were disproportionate under the rule of *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), because the reasons the trial court gave for exceeding the guideline range were insufficient as contrasted with the amount of departure, and also the trial court had failed to properly complete a sentencing information report departure form. At the resentencing, the trial court provided additional detail in support of its reasons for exceeding the guideline range, focusing on the circumstances of the offenses. Since this Court's opinion was released directing resentencing, the Michigan Supreme Court has provided substantial gloss on the application of the proportionality doctrine of *People v Milbourn*, *supra*, it being noteworthy that, as applied by the Michigan Supreme Court in opinion cases, not a single sentence has been deemed disproportionate. *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997); *People v Lemons*, 454 Mich 234; 562 NW2d 447 (1997); *People v Hansford* (After Remand), 454 Mich 320; 562 NW2d 460 (1997); *People v Houston*, 448 Mich 312; 532 NW2d 508 (1995). The principle of proportionality is now understood in a substantially different light. In criminal cases, the law of the case doctrine is not inflexible and will not be

applied to create injustice. *People v Wells*, 103 Mich App 455, 463; 303 NW2d 226 (1981); *People v Herrera*, 204 Mich App 333, 341; 514 NW2d 543 (1994).

Here, the facts satisfy this Court that the sentences imposed are not disproportionate to the offenses or the offender. As the trial court accurately noted at resentencing, when the plot to incinerate the robbery victims led to spontaneous explosion of the gasoline defendant and his two confederates were using to douse the crime scene, only the good fortune that a police car was passing resulted in the victims being saved from being burned alive. Both victims, however, suffered third degree burns requiring extensive hospitalization and resulting in permanent scarring and disfigurement. As in *People v Merriweather*, 447 Mich 799; 527 NW2d 460 (1994), and *Lemons, supra*, these crimes involved “unspeakably atrocious acts.” The trial court also properly took into account defendant’s incredible denial of involvement to the presentence investigator as reflecting adversely on defendant’s prospects for rehabilitation. *Lemons, supra* at 260; *People v Wesley*, 428 Mich 708; 411 NW2d 159 (1987).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Henry W. Saad