

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VICTOR HUNTER,

Defendant-Appellant.

UNPUBLISHED

March 20, 1998

No. 193742

Genesee Circuit Court

LC No. 95-052689 FH

Before: Cavanagh, P.J., and White and Young, Jr., JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and the trial court sentenced defendant to a prison term of twenty-five to fifty years. Defendant appeals as of right. We affirm.

Defendant first claims that the trial court abused its discretion in denying his motion for mistrial. This Court reviews the trial court's grant or denial of a mistrial for an abuse of discretion. A motion for a mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs the defendant's ability to get a fair trial. *People v Lugo*, 214 Mich App 699, 704; 542 NW2d 921 (1995).

Defendant asserts that new evidence of defendant's extensive memory loss constituted grounds for a mistrial because his competency to stand trial and ability to effectively communicate with his counsel was compromised. We disagree.

Defendant relies on a bystander's note suggesting that he suffered from memory lapses. However, where a defendant is able to give a detailed account of the events at issue, a general claim of memory loss does not render him incompetent to stand trial. See *People v Stolze*, 100 Mich App 511, 515; 299 NW2d 61 (1980). A psychological evaluation stated that defendant "demonstrated an ability to rationally assist in his own defense." Defendant has not pointed to anything in the record that indicates that at any time he was unable to understand the nature of the proceedings or of assisting his

defense. See MCL 330.2020(1); MSA 14.800(1020)(1). Thus, the trial court did not abuse its discretion in denying defendant's motion for a mistrial.¹

Next, defendant argues that the trial court abused its discretion in sentencing him to a term of twenty-five to fifty years' imprisonment. We disagree. Defendant's sentences are within the guidelines and are therefore presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant has not presented the sentencing court and this Court with any mitigating factors sufficient to overcome the presumption of proportionality. *People v Eberhardt*, 205 Mich App 587, 591; 518 NW2d 511 (1994). Defendant's sentences are proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The fact that defendant may not live to serve his entire sentence is immaterial. There is no requirement that the trial court tailor every defendant's sentence in relationship to the defendant's age. *People v Lemons*, 454 Mich 234, 258-259; 562 NW2d 447 (1997).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Helene N. White
/s/ Robert P. Young, Jr.

¹ Defendant also claims that his counsel was ineffective and that the trial court erred when it would not grant additional time to investigate defendant's diminished capacity defense. These issues are not preserved for appellate review because they were not raised in defendant's statement of the issues presented. See *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990). In any event, counsel brought the matter to the court's attention as soon as she learned of defendant's alleged "memory loss" problem. Accordingly, defendant has not shown that the performance of his counsel was below an objective standard of reasonableness under prevailing professional norms. See *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). Likewise, defendant has not established that the trial court abused its discretion in refusing his request for a continuance. See *People v McCrady*, 213 Mich App 474, 481; 540 NW2d 718 (1995). Nor has defendant established that his cocaine use or memory loss can legitimately be regarded as newly discovered evidence.