STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COURTNEY JEFFRIES,

Defendant-Appellant.

UNPUBLISHED
May 8, 1998

No. 197557
Recorder's Court
LC No. 95-001835

Before: Neff, P.J., and White and D. A. Teeple,* JJ.

MEMORANDUM.

Following a bench trial, defendant was acquitted of assault with intent to murder, MCL 750.83; MSA 28.278, but convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and felony-firearm, MCL 750.227b; MSA 28.424(2). He was sentenced to 6-1/2 to ten years' and two years' imprisonment, respectively. Defendant appeals as of right. We affirm.

Defendant argues that he was deprived of the effective assistance of counsel because trial counsel failed to adequately investigate defendant's mental impairments to ascertain whether defendant had the mental capacity to form the requisite specific intent for assault with intent to murder. Appellate review of this claim is limited to the record in light of defendant's failure to move for a new trial or an evidentiary hearing on this basis below. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

On the instant record, there is no indication that defendant suffers from a mental deficiency of a nature that would render defendant unable to form the requisite intent for assault with intent to murder. See e.g., *People v Fields*, 64 Mich App 166, 173; 235 NW2d 95 (1975). Accordingly, defendant has failed to establish that counsel's performance was constitutionally-deficient, *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997), and, likewise, failed to present a colorable claim of ineffective assistance that would justify a remand for an evidentiary hearing.

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

The trial court's reference to the sentencing guidelines constitutes sufficient justification to satisfy the articulation requirement. *People v Broden*, 428 Mich 343, 346; 408 NW2d 789 (1987).

Defendant's assault sentence was tailored to the particular circumstances of the offense and offender where the trial court indicated that it was imposing a sentence consistent with the guidelines and with the level of defendant's involvement in the torture of the victim. *People v McFarlin*, 389 Mich 557, 574; 208 NW2d 504 (1973).

Defendant has failed to rebut the presumption of proportionality that attends a sentence within the sentencing guidelines range. *People v Eberhardt*, 205 Mich App 587, 591; 518 NW2d 511 (1994).

Affirmed.

/s/ Janet T. Neff
/s/ Helene N. White
/s/ Donald A. Teeple