

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BYRON L. HOFFMEISTER,

Defendant-Appellant.

UNPUBLISHED
September 4, 1998

No. 201169
Oakland Circuit Court
LC No. 91-112798 FC

Before: Murphy, P.J., and Gribbs and Gage, JJ.

PER CURIAM.

Following an eight-day jury trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549. He was sentenced to sixty to two hundred years' imprisonment. He appeals as of right. We affirm.

The case arises out of the July 15, 1967, brutal murder of Marsha Short. The police investigation initially focused on the victim's husband, Bruce Short, who was tried and acquitted in 1968. In May 1972, the State Police identified previously unidentified prints, including a bloody palm print, as defendant's. However, defendant was not indicted and charged with first-degree murder until 1991. He was tried and convicted of second-degree murder in 1992. This Court, in an unpublished per curiam opinion, subsequently reversed that conviction and remanded the case for a new trial. *People v Hoffmeister*, (Docket No. 154531, issued 11-21-95).¹ Defendant's theory during the second trial was that he was guilty only of involuntary manslaughter because the killing occurred during the heat of passion.

Defendant now argues that due process requires that the charges be dismissed because the unjustified eighteen-year delay between the offense and the charging of defendant prejudiced his right to a fair trial. We do not agree.

The threshold test for determining whether a defendant was denied due process by delay is whether the defendant suffered prejudice. *People v Reddish*, 181 Mich App 625, 627; 450 NW2d 16 (1989). Defendant must show that his right to a fair trial was substantially prejudiced by the delay and that the prosecution intended to gain a tactical advantage through the delay. *People v White*, 208 Mich

App 126, 134; 527 NW2d 34 (1994) (citing *United States v Marion*, 404 US 307, 324-326; 92 S Ct 455; 30 L Ed 2d 468 (1971)). Possible prejudice is not sufficient, nor can defendant sustain his burden with general, undetailed claims of prejudice, such as memory loss or missing witnesses. *Marion*, *supra* at 321-326; *White*, *supra* at 134-135; *Reddish*, *supra* at 627-628; *People v Loyer*, 169 Mich App 105, 119-120; 425 NW2d 714 (1988). This Court has declined to accept the argument that an exceptionally long delay, itself, raises a strong inference of prejudice. *Id.* at 120.

Here, defendant argues that he was prejudiced by the delay because evidence was lost, police reports became unusable because officers had left the community, died, or failed to sign the reports, and the anonymous tips received were never placed in a report. The only “lost” evidence defendant identifies is the picture of him found on the living room table. However, although the actual picture was not available, a photograph of the items on the living room table, including defendant’s photograph, was admitted into evidence, and a witness was able to identify the person in the photograph as defendant. Defendant fails to specify which police reports became unusable and what information they contained. Defendant’s general allegation that reports were unusable is not sufficient to sustain defendant’s burden. Defendant’s claim that anonymous tips were not placed in police reports does not establish prejudice, particularly as the anonymous tipster testified at trial. See *Loyer*, *supra* at 119. Further, although both the prosecution and the trial court acknowledged that the investigation was handled poorly, there is no evidence that the prosecution intended to gain a tactical advantage by delaying defendant’s arrest. Defendant has failed to establish that his right to a fair trial was substantially prejudiced by the eighteen-year delay.

Defendant also argues that he is entitled to credit for time served since 1972 on a separate conviction.² We disagree and conclude that the sentencing court did not abuse its discretion by refusing to grant defendant credit for time served from May 1972, the date when the State Police identified him as a probable suspect. Defendant is only entitled to credit for any presentence time served for the offense for which he is convicted. *People v Prieskorn*, 424 Mich 327, 340-341; 381 NW2d 646 (1985). We are not convinced that the trial court abused its discretion in not awarding defendant credit because the police investigation was poorly handled. *People v Adkins*, 433 Mich 732, 742, 750; 449 NW2d 400 (1989).

Finally, defendant argues that his sentence of sixty to two hundred years’ imprisonment violates the principle of proportionality. We do not agree. The sentencing court may depart from the sentencing guidelines where the guidelines are not proportionate to the seriousness of the crime or the defendant’s criminal background. *People v Milbourn*, 435 Mich 630, 656-657; 461 NW2d 1 (1990). Departures may be appropriate if the guidelines do not adequately reflect important facts that may legitimately be considered. *People v Phillips (On Rehearing)*, 203 Mich App 287, 291; 512 NW2d 62 (1994). A sentencing court may exceed the guidelines where the scoring fails to reflect the severity of the defendant’s actions. *People v Granderson*, 212 Mich App 673, 680-681; 538 NW2d 471 (1995). There is no requirement that the sentencing court must tailor a defendant’s sentence to his age, *People v Lemons*, 454 Mich 234, 258-259; 562 NW2d 447 (1997), and this Court is not required to resentence defendant because his indeterminate sentence in effect constitutes a nonparolable life sentence. *People v Kelly*, 213 Mich App 8, 15-16; 539 NW2d 538 (1995).

The sentencing court did not abuse its discretion by exceeding the guidelines in this case. At the time of his arrest for the present offense, defendant was serving a sentence for the murder of a seventeen-year-old woman. Defendant has also been convicted of kidnapping and gross indecency stemming from an incident involving an eight- or nine-year-old victim. In addition, the guidelines do not adequately account for the particular viciousness and brutality of this crime. The evidence offered at trial established that the victim in the present case was stabbed at least twenty to twenty-five times and that her body was found on the blood-covered kitchen floor amidst a chair and broken glass. The blood splattering found at the scene indicated that defendant kicked the victim and stomped his foot down on her head and body.

Moreover, contrary to defendant's argument, the sentencing court's statements do not indicate that it attributed the delay in the case to defendant. At all times, the sentencing court indicated that the delay was the fault of law enforcement officials. We find defendant's sentence proportionate to the seriousness of the crime and his criminal background.

Affirmed.

/s/ William B. Murphy

/s/ Roman S. Gibbs

/s/ Hilda R. Gage

¹ The Supreme Court denied the application for leave to appeal. *People v Hoffmeister*, 451 Mich 864 (1996).

² Defendant was convicted of second-degree murder for the death of a young woman in Livingston County. *People v Hoffmeister*, 394 Mich 155; 229 NW2d 305 (1975).