

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY ALLEN ANTHONY,

Defendant-Appellant.

UNPUBLISHED

February 5, 1999

No. 193986

Recorder's Court

LC No. 95-004742

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

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of two counts of assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant fired five to six shots into a car with three unarmed passengers, seriously injuring two men. Defendant was sentenced to ten to twenty years' imprisonment for each of the assault with intent to murder convictions and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant's sole issue on appeal is that the trial court violated the principle of proportionality expressed in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Under *Milbourn*, *supra* at 660, a sentencing court abuses its discretion when it violates the principle of proportionality. A sentence must be proportionate to the seriousness of the crime and the defendant's prior record. *Id.* at 635-36; *People v Paquette*, 214 Mich App 336, 344-45; 543 NW2d 342 (1995). A sentence imposed within an applicable sentencing guidelines range is presumptively neither excessively severe nor unfairly disparate. *People v Broden*, 428 Mich 343, 354-55; 408 NW2d 789 (1987); *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). However, in unusual circumstances, such sentences can constitute an abuse of discretion. *Milbourn*, *supra*, at 661.

Defendant's ten year minimum sentences here are within the sentencing guidelines range of 96 to 180 months. Defendant's employed status and his lack of criminal history, in our judgment, are not unusual circumstances which overcome the presumption of proportionality. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Although the shooting incident, according to defendant,

represented a reaction to a prior beating of defendant, the beating took place forty-five minutes earlier. Defendant had a sufficient amount of time to cool off. Instead, he went home, armed himself and paced outside his home. Given the seriousness of defendant's crime, we conclude that defendant's ten year minimum sentences are not disproportionate.

Affirmed.

/s/ Helene N. White

/s/ Stephen J. Markman

/s/ Robert P. Young, Jr.