

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY WAYNE HARVEY, II.,

Defendant-Appellant.

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UNPUBLISHED

February 19, 1999

No. 204478

Monroe Circuit Court

LC No. 97-028221 FH

Before: Gribbs, P.J., and Saad and P.H. Chamberlain\*, JJ.

MEMORANDUM.

Defendant appeals by right his plea-based sentences for armed robbery, MCL 750.529; MSA 28.797, and felony-firearm, MCL 750.227b; MSA 28.424(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On April 18, 1997 defendant pleaded guilty to armed robbery and felony-firearm. In return for the pleas the prosecutor agreed to dismiss a supplemental charge of habitual offender. The parties agreed that the court would impose a minimum term of four and one-half years for the conviction of armed robbery, and that as required by law, the sentences would be consecutive. In addition, the parties agreed that the sentences would be concurrent to a sentence defendant was serving in Oregon, and that he would receive credit for time served. The court accepted the plea.

On May 29, 1997 the court sentenced defendant to four and one-half to twenty years for the conviction of armed robbery, with credit for 572 days, and to two years for the conviction of felony-firearm, with credit for two years. The granting of credit was in accordance with the plea agreement.

On appeal, defendant argues that his minimum term for the conviction of armed robbery is disproportionate. Defendant contends that in imposing the sentence that it did, the trial court did not take into consideration the fact that the victim was not physically harmed in the incident. In addition, defendant asserts that rather than incarceration, he is in need of psychological and substance abuse treatment.

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

We affirm. Sentence length is reviewed pursuant to the principle of proportionality. A sentence must be “proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Defendant’s minimum term was within the guidelines. A sentence that falls within the guidelines is presumed to be proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). In imposing the sentence that it did, the court noted defendant’s prior record and the serious nature of the instant offenses. The trial court’s articulation of reasons for imposing the sentence that it did was sufficient. *People v Sandlin*, 179 Mich App 540, 542-543; 446 NW2d 301 (1989). The factors cited by defendant, i.e., lack of injury to the victim and his need for substance abuse treatment, do not overcome the presumption that the sentence is proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Affirmed.

/s/ Roman S. Gribbs  
/s/ Henry William Saad  
/s/ Paul H. Chamberlain