

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLAUDE WILLIAM BARRY,

Defendant-Appellant.

UNPUBLISHED

February 23, 1999

No. 206990

Genesee Circuit Court

LC No. 96-054373 FH

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

MEMORANDUM.

Defendant appeals by leave granted his sentences for manslaughter with a motor vehicle, MCL 750.321; MSA 28.553, operating a vehicle under the influence causing injury, MCL 257.625(5); MSA 9.2325(5), and failure to stop at a serious personal injury accident, MCL 257.617; MSA 9.2317. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant drove while intoxicated and caused a collision which killed one person and seriously injured another person. In return for his pleas, plaintiff agreed to dismiss charges of operating a vehicle under the influence of intoxicating liquor and failure to stop.

The court sentenced defendant to concurrent terms of ten to fifteen years in prison for the conviction of manslaughter, and three to five years in prison for the other convictions. The ten-year term was within the guidelines. In imposing sentence, the court cited defendant's prior record, his history of substance abuse, and the circumstances of the offense.

On appeal, defendant argues that the sentence for the conviction of manslaughter is disproportionate. He contends that the circumstances of the offense, while serious, and his own circumstances do not warrant imposition of the most severe sentence that can be imposed for that offense.

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). 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). Defendant's minimum term for the manslaughter conviction was within the guidelines, and thus is presumed to be proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). The court's acknowledgment of the guidelines and imposition of a sentence within the guidelines satisfies the requirement that the court articulate its reasons for imposing sentence. *People v Bailey (On Remand)*, 218 Mich App 645, 646-647; 554 NW2d 391 (1996). The factors cited by defendant, i.e., his lack of a criminal record (an inaccurate assertion, defendant having been convicted of possession of marijuana), and his lack of any prior alcohol-related driving offenses, do not overcome the presumption that the ten-year minimum term is proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ William B. Murphy

/s/ Michael J. Talbot