

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWAYNE E. WILSON,

Defendant-Appellant.

UNPUBLISHED

March 9, 1999

No. 206590

Oakland Circuit Court

LC No. 97-150587 FC

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

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of felonious assault, MCL 750.82; MSA 28.277, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to two to four years' imprisonment for each felonious assault conviction, the sentences to be served concurrently. Defendant also received mandatory sentences of two years' imprisonment for each felony-firearm conviction to be served concurrently with each other, while the felony-firearm and felonious assault sentences are to be served consecutively to each other.¹ Defendant now appeals as of right. We affirm.

Defendant argues that the sentences imposed for his felonious assault convictions violate the principle of proportionality. He contends that his background and the circumstances of the offenses do not justify the sentences imposed, which are at the top end of the minimum sentencing guidelines' range of twelve to twenty-four months. He further argues that the trial court was required to give consideration to the fact that his felonious assault and felony-firearm sentences are to be served consecutively to each other.

This Court reviews a sentence for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). A sentence constitutes an abuse of discretion if it is not proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.*; *People v Green*, 228 Mich App 684, 698; 580 NW2d 444 (1998). As a general rule, a sentence that falls within the sentencing guidelines' range is presumed to be neither excessive nor disparate. *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). Defendant has failed to provide evidence of any unusual circumstances to overcome this presumption. *People v Hogan*, 225 Mich App 431, 437; 571

NW2d 737 (1997); *People v Cotton*, 209 Mich App 82, 85; 530 NW2d 495 (1995). Contrary to defendant's contention, his lack of criminal record does not constitute an "unusual circumstance" for purposes of overcoming the presumption of proportionality. *People v Piotrowski*, 211 Mich App 527, 533; 536 NW2d 293 (1995).

Defendant admitted to pulling out a loaded gun, and the testimony and other evidence presented at trial showed that he waved the gun around, putting four women in danger, while making threats. He pointed the gun directly at Robin Lucka's temple, causing her to drop to the floor and pray for her life. He shot Kelly Lucka in the foot, and then pointed the gun directly at her face and pulled the trigger; if not for a fortuitous gun malfunction, she would most likely have been seriously injured or killed. Defendant then left the scene without attempting to provide aid for his victim, and he did not present himself to police until eleven days later. Under these circumstances, we find that a minimum sentence of two years in prison for each felonious assault conviction is proportionate.

In determining the proportionality of an individual sentence, this Court is not required to consider the cumulative length of consecutive sentences. *People v Miles*, 454 Mich 90, 95; 559 NW2d 299 (1997); *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998). Rather, this Court must evaluate the proportionality of the individual sentences in the abstract. *Kennebrew*, *supra* at 609. Because the felonious assault sentences are proportionate to the seriousness of the circumstances surrounding the offense and the offender, the trial court did not abuse its discretion in sentencing defendant.

Affirmed.

/s/ William B. Murphy

/s/ Hilda R. Gage

/s/ Brian K. Zahra

¹ We note that defendant's judgment of sentence indicates that his sentence was enhanced pursuant to MCL 769.13; MSA 28.1085; however, the record does not support this, and we assume that the notation on the judgment of sentence is a typographical error.