

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAROD ANTHONY HILL,

Defendant-Appellant.

UNPUBLISHED

March 30, 1999

No. 204642

Genesee Circuit Court

LC No. 95-051976 FH

Before: O'Connell, P.J., and Jansen and Collins, JJ.

PER CURIAM.

Defendant appeals as of right a new judgment of sentence entered by the trial court on remand for partial resentencing pursuant to this Court's decision in *People v Hill*, 221 Mich App 391; 561 NW2d 862 (1997). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1995, defendant pleaded guilty to one count of first-degree home invasion, MCL 750.110a; MSA 28.305(a), and one count of assault with intent to rob while unarmed, MCL 750.88; MSA 28.283. He was initially sentenced to concurrent terms of twelve to twenty years' and eight to fifteen years' imprisonment, respectively, to run consecutively to a prior sentence that defendant was serving at the time of sentencing. The trial court later modified its sentencing decision when it discovered that consecutive sentencing is permitted in this case, ordering defendant to serve the sentences in this case consecutively, but concurrently with the prior sentence that defendant was already serving.

In defendant's previous appeal, this Court upheld the modification of defendant's original sentences and affirmed defendant's sentence for the home invasion conviction, but vacated the sentence for the assault conviction and remanded for resentencing on that conviction only, based upon the trial court's failure to complete an SIR pursuant to the sentencing guidelines for that offense. On remand, defendant was resentenced for the assault conviction below the guidelines sentence range calculated for that offense (five to ten years) to three to fifteen years' imprisonment, consistent with defense counsel's argument that defendant's combined minimum sentence should not exceed fifteen years if consecutive sentences are imposed. Later, after filing the instant appeal, defendant filed a motion for resentencing in

the trial court pursuant to MCR 7.208(B)(1), raising cruel and unusual punishment and double jeopardy arguments, which motion was denied.

On appeal, defendant contends that his consecutive sentences constitute cruel and unusual punishment in violation of the Federal and Michigan Constitutions. We disagree. Sentences that are proportionate to the seriousness of the offense and the offender are not cruel and unusual punishment. *People v Terry*, 224 Mich App 447, 456; 569 NW2d 641 (1997). The proportionality of consecutive sentences is not determined on the basis of the cumulative length of the combined sentences, but by determining the proportionality of each sentence individually. *People v Miles*, 454 Mich 90, 95; 559 NW2d 299 (1997). Here, this Court has already determined that defendant's twelve to twenty-year sentence for first-degree home invasion conviction is proportionate. *Hill, supra* at 397-398. We now find that defendant's consecutive three to fifteen-year sentence for assault with intent to rob while unarmed, which is below the presumptively proportionate guidelines sentence range, is proportionate as well.

Defendant's double jeopardy argument is beyond the scope of this appeal, which is limited to resentencing issues. *People v Jones*, 394 Mich 434, 435-436; 231 NW2d 649 (1975); *People v Gauntlett*, 152 Mich App 397, 400; 394 NW2d 437 (1986). In any event, defendant's argument is without merit. Defendant's double jeopardy rights are not violated by his multiple convictions of first-degree home invasion and assault with intent to rob while unarmed arising out of the same criminal transaction. See *People v Murry*, 106 Mich App 257, 260-261; 307 NW2d 464 (1981). See also *People v St. John*, 230 Mich App 644; 585 NW2d 849 (1998). Moreover, this case does not involve successive prosecutions in violation of defendant's double jeopardy rights.

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins