STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 18, 1999
v	No. 207170 Oakland Circuit Court
MICHAEL L. PAUL, Defendant-Appellant.	LC No. 96-149389 FC

Before: Markey, P.J., and Holbrook, Jr. and Neff, JJ.

PER CURIAM.

Following a jury trial, defendant, who was sixteen years old at the time of the instant offenses, was convicted of assault with intent to commit 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). He was sentenced as an adult to twenty to forty years' imprisonment for the assault conviction, consecutive to two years' imprisonment for the felony-firearm conviction. Defendant appeals by right his sentencing in this matter. We affirm.

I

Defendant first argues that the trial court abused its discretion in sentencing him as an adult rather than as a juvenile. We disagree.

We review a trial court's findings of fact supporting its determination regarding the factors enumerated in MCR 6.931(E)(3) and MCL 769.1(3); MSA 28.1072(3) for clear error, while the trial court's ultimate decision to sentence defendant as an adult is reviewed for an abuse of discretion. *People v Dilling*, 222 Mich App 44, 52; 564 NW2d 56 (1997); *People v Launsburry*, 217 Mich App 358, 362; 551 NW2d 460 (1996).

MCR 6.931(A) and MCL 769.1(3); MSA 28.1072(3)[1] require a trial court to conduct a juvenile sentencing hearing to determine if the best interests of the juvenile and the public would be served better by sentencing the juvenile as an adult. *People v Cheeks*, 216 Mich App 470, 474; 549 NW2d 584 (1996). In making this determination, the trial court must consider several factors, including

the juvenile's prior record and character, physical and mental maturity, the seriousness and the circumstances of the offense, whether the offense is part of a pattern of similar offenses, whether the juvenile's behavior is likely to render him dangerous if released at age twenty-one, whether rehabilitation of the juvenile is more likely to occur in the juvenile or adult system, and what is in the best interests of the public welfare. MCR 6.931(E)(3). See also MCL 769.1(3); MSA 28.1072(3). The prosecutor has the burden of establishing by a preponderance of the evidence that the best interests of the juvenile and public would be served by sentencing the juvenile as an adult offender. MCR 6.931(E)(2); *Cheeks, supra* at 475.

In the present case, the record reveals that the trial court carefully considered the relevant criteria before sentencing defendant as an adult. The court found that defendant's juvenile record contained offenses escalating in severity from truancies to felonies; that he displayed disruptive behavior at home, school, and in the juvenile facility; that a 1993 evaluation indicating an I.Q. of sixty-seven appeared to be inaccurate in light of the 3.5 grade point average he recently achieved at the juvenile facility; that while defendant had no prior convictions for assaultive crimes, his record revealed a school suspension for fighting and an unsubstantiated report that he punched a peer at the juvenile facility; that defendant's crime, in which he shot an unarmed man in the back and continued to shoot him after he fell, was extremely serious; that defendant's antisocial behavior and repeated placements in the juvenile facility demonstrated that he would not be amenable to treatment and was unlikely to be rehabilitated in the juvenile system; that given the nature of the offense and defendant's attitude, he would continue to present a danger to the community if released at age twenty-one; and, that the interests of the public required sentencing him as an adult. The trial court's findings of fact were supported by the evidence and were not clearly erroneous.

Nor did the trial court abuse its discretion in ultimately deciding to sentence defendant as an adult given his juvenile record, the seriousness of the offense, and his failure to use his numerous placements in the juvenile system for rehabilitation, as evidenced by his successful escape from the facility on three occasions and his continued disruptive behavior in the juvenile system. Contrary to defendant's assertion on appeal, the information provided by the prosecution's experts was more than adequate to allow the trial court to make an informed sentencing decision. The experts' failure to conduct intelligence or other testing on defendant did not deprive him of an accurate hearing. See *Launsburry, supra* at 363. In addition, although one expert was more familiar with the juvenile system and the other with the adult system, the information provided allowed the trial court to adequately evaluate the programs available in each system and defendant's potential for rehabilitation. We find that the trial court had all the statutory required evidence before it and rendered its decision in accordance with the applicable law and procedures.

II

Next, defendant contends that his twenty-year minimum sentence for assault with intent to commit murder, which exceeded the guidelines' recommended minimum range of eight to fifteen years, was disproportionately severe given his young age, his background, and the absence of other assaultive offenses on his record. We disagree.

We review a trial court's sentencing decision for an abuse of discretion. *People v Castillo*, 230 Mich App 442, 447; 584 NW2d 606 (1998). A sentence constitutes an abuse of discretion if it violates the principle of proportionality. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The key test of proportionality is not whether the sentence departs from or adheres to the guidelines' range, but whether it appropriately reflects the seriousness of the circumstances surrounding the offense and the offender. *Id*. at 660-661.

After a thorough review, we conclude that defendant's sentence is proportionate to the seriousness of the offense and the offender. As the trial court noted, after defendant threatened to kill the victim's family, he shot the unarmed victim in the back as he tried to run to his home to protect his family and continued to shoot at him after he fell to the ground, was bleeding and in distress. In addition, the circumstances surrounding the shooting indicated that defendant planned the shooting, that he intended to injure the victim more seriously than he did, and that he acted with a complete disregard for life. Accordingly, the trial court did not abuse its discretion in imposing defendant's sentence.

Defendant also asserts that the trial court failed to individualize his sentence and, instead, impermissibly sentenced him based upon his race when it stated that it was imposing a lengthy sentence to "send a message" to the Pontiac community, an area of Oakland County with a large minority population, about "hoodlums such as yourself" and "people like you." We disagree. There is no indication that the trial court, by stating its desire to send a message to the Pontiac community generally, impermissibly imposed defendant's sentence based upon his race or in order to send a message to a particular racial group. Cf. *People v Gjidoda*, 140 Mich App 294, 301-302; 364 NW2d 698 (1985). As previously discussed, the sentence was tailored to the circumstances of the case and the individual offender, *People v McFarlin*, 389 Mich 557, 574; 208 NW2d 504 (1973), and the trial court properly relied, in part, upon the permissible criterion of deterring others from committing like offenses in imposing the sentence, *People v Adams*, 430 Mich 679, 686; 425 NW2d 437 (1988); *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972).

We affirm.

/s/ Jane E. Markey
/s/ Donald E. Holbrook, Jr.
/s/ Janet T. Neff

[1] MCL 769.1; MSA 28.1072 was amended by 1996 PA 247 and 248. Section 2 of the act states that "[t]his amendatory act applies to offenses committed on or after its effective date." Section 3 of the act states that "[t]his amendatory act shall take effect January 1, 1997." The act was approved June 11, 1996, and filed June 12, 1996, and was ordered to take immediate effect. See Historical and Statutory Notes to MCL 769.1; MSA 28.1072. Thus, the amendments to the act became applicable (i.e., immediately effective) on January 1, 1997, the date specified in the act. Art 4, § 27; *Selk v Detroit Plastic Products (On Resubmission)*, 419 Mich 32, 35, n 2; 348 NW2d 652 (1984); *Genesee Merchants Bank & Trust Co v St. Paul Fire & Marine Ins Co*, 47 Mich App 401, 405-406; 209 NW2d 605 (1973); *Weaver v Haney*, 32 Mich App 424, 427; 188 NW2d 905 (1971). Because defendant committed the instant offenses on October 18, 1996, the statute as amended by 1996 PA

247 and 248 did not apply. The applicable version of the statute is that version in effect pursuant to 1993 PA 85, effective April 1, 1994.